MONTANA LEGISLATIVE HISTORY

Chapter 349 19 97

Bill H _____ S 89 Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Business & Industry		
Hearing Date(s)	Mar 27	✓ C	Hearing Date(s)	Jan 31	✓ C
	Apr 02	✓ C		Mar 09	✓ C
	_____	____ C		_____	____ C
	_____	____ C		_____	____ C
Date Out	_____	____ C			

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

	TRANSMITTED TO HOUSE		
1/30	FIRST READING		
1/30	REFERRED TO BUSINESS & LABOR		
3/07	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCUR MOTION FAILED	20	79

SB 89 INTRODUCED BY BECK *LC0396 DRAFTER: HEIMAN*

REVISE THE LAWS RELATING TO THE REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL TELECOMMUNICATIONS ACT OF 1996

BY REQUEST OF BLUE RIBBON TELECOMMUNICATIONS TASK FORCE

12/31	INTRODUCED		
1/03	REFERRED TO BUSINESS & INDUSTRY		
1/06	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/12	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/31	HEARING		
3/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/11	2ND READING PASSED	43	7
3/12	3RD READING PASSED	43	7
	TRANSMITTED TO HOUSE		
3/18	FIRST READING		
3/18	REFERRED TO BUSINESS & LABOR		
3/27	HEARING		
4/03	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	98	2
4/05	3RD READING CONCURRED	96	4
	RETURNED TO SENATE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	50	0
4/10	3RD READING CONCURRED AS AMENDED	44	6
4/15	SIGNED BY PRESIDENT		
4/16	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 349		
	EFFECTIVE DATE: 04/22/97		

SB 90 INTRODUCED BY GROSFIELD *LC0355 DRAFTER: FOX*

REVISE THE LAWS RELATING TO PUBLIC SWIMMING POOLS AND PUBLIC BATHING PLACES

BY REQUEST OF DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES

12/31	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/06	FIRST READING		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/22	HEARING		
1/29	TABLED IN COMMITTEE		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING DO PASS MOTION FAILED	21	29

SENATE BILL NO. 89

INTRODUCED BY BECK

BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR FEDERAL UNIVERSAL SERVICE SUPPORT; PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY ADOPT RULES TO ALLOW VERIFICATION OF A SUBSCRIBER'S CHANGE IN TELECOMMUNICATIONS SERVICES AND PROVIDING A PENALTY FOR VIOLATION OF THE VERIFICATION RULES; ALLOWING FOR SPECIAL RATEMAKING PROCEDURES; RESTRICTING THE RESALE OF CERTAIN TELECOMMUNICATIONS SERVICES; AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED TELECOMMUNICATIONS PROVIDERS; CHANGING THE TYPES OF REGULATION AND CRITERIA FOR ALTERNATIVE REGULATION OF TELECOMMUNICATIONS PROVIDERS; INCREASING THE AMOUNT OF ASSISTANCE IN THE TELEPHONE LOW-INCOME ASSISTANCE PROGRAM; ESTABLISHING AN INTERIM UNIVERSAL ACCESS TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL ACCESS AND SERVICE; AMENDING SECTIONS 2-4-102, 35-18-503, 69-3-305, 69-3-801, 69-3-802, 69-3-803, 69-3-805, 69-3-807, 69-3-809, 69-3-811, AND 69-3-1001, MCA; REPEALING SECTIONS 69-6-101, 69-6-102, AND 69-6-103, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the pul service commission and to the department of revenue.

[Section 4] authorizes the public service commission to adopt procedural rules relating to mediat and arbitration for interconnection proceedings.

[Section 12] grants rulemaking authority to the public service commission to make rules establishi verification procedures for the submission or execution of a change in a subscriber's selection of a provic of telecommunications services. The rules are to address the problems of "slamming"--a change in servi providers that was unauthorized or a service change authorization that was made under deceptive misleading circumstances.

Under the interim universal access provisions of [sections 16 through 22], the public servic commission is to establish surcharge rates as provided in [section 21]. The surcharge rates must take int account different cost structures among telecommunications carriers, particularly the wireless and CAT industry. The retail revenue for these providers should be based on an equitable, per access line, revenu equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessar to fund the program. The formulation should consider any overlapping federal discounts. The commissio should appoint an oversight group consisting of users and industry participants, to meet quarterly with the commission to review revenue, discounts, and the administration of [sections 16 through 22]. The public service commission shall also establish a method for paying discount reimbursements in accordance with [section 20]. The public service commission shall cooperate with the department of revenue in determining rates, administering offsets against any surcharges, and other matters necessary for the administration of [sections 16 through 22].

The department of revenue shall administer the collection of the surcharge by rule. Because of the limited duration of the program, it is contemplated that the rules and administration be minimal, flexible and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the implementation of [sections 16 through 22].

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Statement of policies.** (1) The commission shall, in the exercise of

the powers conferred upon it under Montana law, consider the following declared policies of the state of Montana:

(a) The state of Montana shall encourage competition on a neutral basis and provide neither competitive advantage nor a competitive disadvantage to any telecommunications carrier.

(b) The regulation of telecommunications carriers by the commission should attempt to produce the same benefits for carriers as competition that includes:

(i) the ability to enter and exit markets quickly and easily;

(ii) the ability to price efficiently and flexibly; and

(iii) incentives to:

(A) offer new products and services;

(B) create operating and investing efficiencies; and

(C) stimulate sales of existing services.

(c) It is the objective of the state of Montana to make basic telecommunications services available at the lowest possible price to all Montanans.

(d) It is the objective of the state of Montana to provide at least a minimum level of public access to advanced telecommunications services through a library, school, or public institution in every Montana community under the universal service access provisions in [sections 16 through 22].

(e) The advanced telecommunications services available in urban areas of Montana should also be available in rural areas at rates reasonably comparable to rates in urban areas.

(f) All Montanans should have the ability to route their telecommunications to their carriers of choice without the need to dial extra codes.

(g) Montana customers should have the ability to retain their telephone numbers when they switch carriers within their local exchange area. Number portability should be provided, to the extent technically feasible and economically reasonable, in accordance with the requirements prescribed by the federal communications commission. The cost to implement number portability should be borne by all telecommunications carriers on a competitively neutral basis. Rural telephone companies may petition the commission for suspension or modification of these requirements.

(h) The commission should proceed at a reasonable speed, based on demonstrated demand, to unbundle the network elements at technically feasible points.

(i) The commission is responsible for ensuring that prices for regulated telecommunications services

are priced above relevant costs to prevent cross-subsidization and predatory pricing.

(j) During the transition to local competition, the commission and regulated telecommuni carriers are encouraged to review and remove any implicit subsidies and any other government-in mandates that inhibit competition.

(k) When establishing new depreciation rates for ratemaking purposes, forward-looking asse consistent with the competitive market and consistent with the asset lives used by competing pro of similar services, should be used.

(2) (a) This section does not alter the state policy of local control and regulation of cooper through their elected boards of trustees and membership as provided in Title 35, chapter 18. How cooperatives providing telecommunications services are subject to registration requirements and provisions applicable to all other unregulated telecommunications carriers.

(b) This section does not grant the commission any power not otherwise provided in anc section of this title applicable to the regulation of carriers of regulated telecommunications service.

NEW SECTION. **Section 2. Interconnection -- construction and effect.** [Sections 5 through 10 not grant any jurisdiction to the commission over telecommunications carriers except as expressly set fc in [sections 5 through 10], and [sections 5 through 10] may not be construed to limit or repeal exempti from the commission's jurisdiction otherwise recognized by statute or law. Legislation may not considered to supersede or modify any provision of [sections 5 through 10] except to the extent that t legislation does so expressly.

NEW SECTION. **Section 3. Interconnection -- jurisdiction.** In addition to the authority granted to t commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for t purposes of implementing [sections 5 through 10], over all telecommunications carriers.

NEW SECTION. **Section 4. Rulemaking authority.** The commission may adopt rules of procedure implement [sections 7 and 8].

NEW SECTION. **Section 5. Duty to interconnect.** (1) The purpose of this section is to impleme specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

(2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

(b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

(c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(c).

(3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection (2)(c) do not apply to a rural telephone company until:

(i) the company has received a bona fide request for interconnection, services, or network elements; and

(ii) the commission determines under subsection (3)(b) that the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)).

(b) The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the commission. The commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a). Within 120 days after the commission receives notice of the request, the commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with the federal communications commission's regulations.

(4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a cable operator providing video programming and seeking to provide any telecommunications service in the area in which the rural telephone company was providing video programming on February 8, 1996.

(5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the aggregate nationwide, may petition the commission for a suspension or modification of the application of a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition. The commission shall grant the petition for the suspension or modification to the extent and for the duration that the commission determines:

(i) is necessary:

(A) to avoid a significant adverse economic impact on users of telecommunications services generally;

(B) to avoid imposing a requirement that is unduly economically burdensome; or

(C) to avoid imposing a requirement that is technically infeasible; and

(ii) is consistent with the public interest, convenience, and necessity.

(b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days receiving the petition. Pending action, the commission may suspend enforcement of the requireme which the petition applies with respect to the petitioning carrier.

NEW SECTION. **Section 6. Voluntary negotiation of interconnection agreements.** Upon recei a request for interconnection, services, or network elements pursuant to [section 5], an incumbent lc exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunicatic carrier without regard to the duties set forth in [section 5(2)(b) or (2)(c)]. The agreement must includ detailed schedule of itemized charges for interconnection and each service or network element included the agreement.

NEW SECTION. **Section 7. Mediation of interconnection agreements.** Upon the written request any party negotiating an agreement for interconnection with another telecommunications carrier, t commission may designate a mediator, who may be a commission member, to mediate any difference arising in the course of the negotiation.

NEW SECTION. **Section 8. Arbitration of interconnection issues.** (1) The commission has th authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed o February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except a expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not app to arbitrations conducted under the authority granted by this section.

(2) During the period from the 135th to the 160th day, inclusive, after the date on which a incumbent local exchange carrier receives a request for negotiation under [section 5], the carrier or an other party to the negotiation may petition the commission to arbitrate any open issues. A party th petitions the commission under this section shall, at the same time as it submits the petition, provide th commission all relevant documentation concerning the following:

(a) the unresolved issues;

(b) the position of each of the parties with respect to those issues; and

(c) any other issue discussed and resolved by the parties.

(3) A party petitioning the commission under this section shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the commission receives the petition.

(4) A nonpetitioning party to a negotiation under [section 5] may respond to the other party's petition and provide any additional information that it wishes within 25 days after the commission receives the petition.

(5) The commission shall limit its consideration to those issues set forth by the parties to the negotiation in the petition for arbitration and the response to the petition.

(6) The commission may appoint a hearings examiner for arbitration proceedings under this section. The hearings examiner shall file with the commission a proposed decision within the time set by order of the commission. A hearings examiner must be assigned with regard to the expertise required for the particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the record in the case. The commission may disqualify the hearings examiner and appoint another hearings examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

(7) Participation in the arbitration proceeding must be limited to the telecommunications carrier requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and the Montana consumer counsel.

(8) Negotiations among the telecommunications carriers may continue, pending a final decision by the arbitrator.

(9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and hearing date.

(10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing

at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(11) The commission may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being arbitrated and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the hearings and the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

(12) When the commission files its final decision or when the hearings examiner files the proposed decision with the commission, each party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

(a) ensure the resolution of issues presented by the parties and ensure that the resolution meets the requirements of [section 5] and this section;

(b) establish rates for interconnection, services, or access to unbundled network elements pursuant to 47 U.S.C. 252(d); and

(c) provide a schedule for implementation of the terms and conditions of the decision by the parties.

(13) If the person who conducted the hearing becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(14) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

NEW SECTION. **Section 9. Approval of arbitration decision.** (1) If the commission has not approved or rejected in its entirety an agreement adopted by arbitration under [section 8(12)] within 30 days of submission by the parties, the agreement is considered approved.

(2) The commission may reject the agreement only if the commission finds that the agreement does

not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of an agreement, the commission shall provide the parties with written findings as to any deficiencies.

NEW SECTION. **Section 10. Approval of interconnection agreements.** (1) Within 90 days of filing of an interconnection agreement adopted by negotiation of the parties to an agreement, the commission shall approve or reject the agreement, or the agreement is considered approved.

(2) The commission may reject an agreement filed under this section only if the commission finds that:

(a) the agreement or a portion of the agreement discriminates against a telecommunications carrier not a party to the agreement; or

(b) the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity.

(3) Upon rejecting an agreement filed under this section, the commission shall issue written findings detailing any deficiencies in the agreement.

NEW SECTION. **Section 11. Determination of eligible carrier status -- universal service support.** (1) The commission is authorized to designate telecommunications carriers as eligible for federal universal service support in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254. This authorization applies to all telecommunications carriers notwithstanding the carrier's exemption from further regulation by the commission.

(2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a service area designated by the commission. In the case of an area served by a rural telephone company, the term "service area" means the company's "study area" unless the federal communications commission establishes a different definition of service area for the company. The term "service area" for all other telecommunications carriers means a geographic area such as a census block or grid block as established by the commission for the purpose of determining universal service obligations and support mechanisms.

(3) Upon receiving a petition from a telecommunications carrier and consistent with the public

interest, convenience, and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(4) If no telecommunications carrier will provide the services that are supported by universal service support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests service, the commission shall determine which telecommunications carrier is best able to provide the service to the requesting unserved community. Any telecommunications carrier ordered to provide service under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible telecommunications carrier for that community or the unserved portion of the community.

(5) The commission shall permit an eligible telecommunications carrier to relinquish its designation as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the commission approves relinquishment under this section, within which the purchase or construction must be completed.

NEW SECTION. **Section 12. Illegal changes in subscriber carrier selections.** (1) A telecommunications carrier may not submit or execute a change in a subscriber's selection of a provider of telecommunications services except in accordance with verification procedures that the commission has adopted by rule pursuant to this section.

(2) Any telecommunications carrier that violates the verification procedures described in subsection

(1) and that collects charges for telecommunications services from a subscriber is liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation, in accordance with procedures that the commission has adopted by rule pursuant to this section. The remedy provided by this section is in addition to any other remedies available by law.

NEW SECTION. **Section 13. Special ratemaking procedures.** (1) A provider of regulated telecommunications services may file with the commission, and the commission shall expeditiously hear, an application to eliminate or minimize a noncost-based differential in the price of its telecommunications services without reestablishing its cost of providing all regulated telecommunications services.

(2) If, upon hearing the application, the commission determines that a noncost-based differential exists in the prices of the services of the provider of regulated telecommunications services, it may authorize the provider to eliminate or minimize the differential in a fashion that neither increases nor decreases the revenue currently being earned by the provider in providing those services.

(3) The commission may, in its discretion, require any change in prices required by subsection (2) to be implemented over a transition period not exceeding 3 years.

NEW SECTION. **Section 14. Biennial report on telecommunications.** The commission is directed to prepare a status report, limited to data readily available by the commission, to the governor and the legislature by December 1 of each even-numbered year. The report must include:

(1) a summary of the implementation of [sections 16 through 22] and this part;

(2) a summary of the status of competition in the telecommunications industry in Montana, including effects on universal service, rates, technological deployment, and economic development;

(3) a comparison of Montana's progress in relation to neighboring states and the nation in the development of an affordable advanced telecommunications system necessary to maintain and advance Montana's economic viability in a global economy;

(4) changes in regulation that can or should be implemented pursuant to the level of competition in the telecommunications industry; and

(5) recommended changes to Montana law to further the goals of [sections 16 through 22] and this part.

NEW SECTION. **Section 15. Restrictions on resale.** The resale of telecommunications services is subject to the following restrictions:

(1) Services that are available for resale at a discounted rate do not include carrier access services.

(2) Resale is limited to retail products and services available to end-user customers. Wholesale services are available only for resale and not predominantly for internal use.

(3) Consistent with the federal Telecommunications Act of 1996, Public Law 104-104, resale between categories of customers is prohibited until any pricing disparity for the same service offered to different categories of customers has been eliminated.

(4) Any explicit universal service support to a specific category of customers may not be redistributed to another category of customers through resale.

(5) Lifeline and other means-tested services offerings may be resold only to customers who qualify for the service.

NEW SECTION. **Section 16. Interim universal access program -- purpose.** (1) There is an interim universal access program.

(2) The purpose of the interim universal access program is to further the goal of universal access to advanced telecommunications services in Montana by:

(a) increasing safety net coverage through which advanced telecommunications services would, at a minimum, be available through a library, school, or other specified type of public institution in every community in the state;

(b) encouraging innovation in communities to bring advanced services to Montana's rural areas; and

(c) assisting communities that have already succeeded in obtaining services when ongoing transport costs threaten the continued availability of these services.

NEW SECTION. **Section 17. Interim universal access program -- definitions.** As used in [sections 16 though 22], the following definitions apply:

(1) "Administrator" means the public service commission.

(2) "Advanced services" means high-speed (56 kbps and above), dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics,

and video telecommunications using any technology.

(3) "Health care provider" means any one of, or a consortium of, the following institutions located in Montana:

(a) postsecondary educational institutions offering health care instruction;

(b) community health care centers or health centers providing health care to migrants;

(c) local health departments or agencies;

(d) community mental health centers;

(e) not-for-profit hospitals; and

(f) rural health clinics.

(4) "Library" means a library located in Montana that is eligible for participation in state-based plans for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).

(5) "School" means:

(a) an elementary school or secondary school that meets the definition set forth in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801) and that does not have an endowment of more than $50 million; or

(b) a bureau of indian affairs elementary and secondary school.

(6) "Tribal college" means a college recognized by the United States government as a tribal college.

NEW SECTION. **Section 18. Interim universal access program -- public access points.** At a minimum, all public access points must provide the general public access to advanced telecommunications services that are not subscription based free of charge and at convenient hours on a walk-in basis. Public access points may offer subscription based services, such as electronic mail, but are not required to administer these types of services.

NEW SECTION. **Section 19. Interim universal access program -- funded services -- application for services.** (1) The universal access program provides funding through discounts only for advanced services for use by public access points, schools, tribal colleges, libraries, and health care providers approved by the administrator.

(2) The first priority of the program is to provide funding for at least one public access point in each Montana community. Subject to available funding, the program shall also provide funding for advanced

services to schools, tribal colleges, libraries, and health care providers.

(3) The administrator shall establish discount levels for services in each of the following categories:

(a) public access points;

(b) education services to schools and tribal colleges for distance learning, electronic access to educational resources, and electronic delivery or reception of educational programming;

(c) library services for libraries not serving as public access points for electronic access to information and library services; and

(d) rural health services to rural health care providers for access to similar services as urban health care providers and to ensure electronic access to health care services.

(4) To receive discounted services under the interim universal access program, public access providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The application must be accompanied by a resolution of support from the governing body of the appropriate city, county, or tribal government in which the applicant is located.

NEW SECTION. **Section 20. Interim universal access program -- services provided at discounts -- reimbursements.** (1) Telecommunications carriers shall provide advanced services to eligible users at specified discounts. The amount of the discount must be reimbursed to the provider from the interim universal access account established in [section 22].

(2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest access point for the requested service. However, the cost to the eligible user may not exceed $100 a month.

(3) If funds from the interim universal access account are not sufficient to fully reimburse for discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced proportionally.

(4) Even if best cost rates available to any business customer increase by more than 5%, the amount payable by an eligible user may not increase by more than 5% during the period from [the effective date of this section] to January 1, 2000.

(5) Subject to restrictions in federal law, if interstate universal access services are established by the federal communications commission, federal funding for universal access services must be used to

reduce state funding for intrastate services.

NEW SECTION. **Section 21. Interim universal access program -- funding -- surcharge rate.** (1) (a) The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate telecommunications services in the state. The surcharge must be determined by the administrator by rule. The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis.

(b) The rate of the surcharge must be set to raise $500,000 during the fiscal year ending June 30, 1998, and $1 million during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as necessary.

(c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item on each carrier's retail telecommunications services bills.

(d) The surcharge may be applied only to telecommunications services. Customer premise equipment is not considered a telecommunications service.

(2) The surcharge is payable quarterly to the department of revenue and deposited by the department in the interim universal access account established in [section 22]. The department may by rule:

(a) establish the form of a reporting statement to be filed by telecommunications carriers subject to the surcharge;

(b) set the date after the end of a fiscal quarter that the quarterly payment must be made;

(c) provide for recordkeeping by telecommunications providers subject to the surcharge; and

(d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted services to be reimbursed, and to pay refunds of overpayment of the surcharge.

(3) (a) The collection of a surcharge under this section is subject to:

(i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;

(ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;

(iii) the estimation of tax on failure to file a statement of provisions of 15-53-112;

(iv) the warrant for distraint provisions of 15-53-113; and

(v) the statute of limitations provisions of 15-53-115.

(b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this

section.

NEW SECTION. **Section 22. Interim universal access program -- account.** An interim universal access account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to [section 21] must be paid to the state treasurer for deposit in the account. After payment of refunds, the balance of the account must be used for the purposes described in [section 20].

NEW SECTION. **Section 23. Commission to make recommendations on universal access and service.** The public service commission shall examine and make recommendations to the 56th legislature on universal access and service. The commission shall:

(1) review the impact on universal access and service in Montana of any federal universal service fund that results from current federal communications rulemaking under the federal Telecommunications Act of 1996;

(2) evaluate the extent to which the federal universal service fund falls short of supporting legislatively defined universal access and service goals in Montana; and

(3) develop plans and propose legislation for the establishment of a state universal service fund that would ensure the attainment of those goals.

Section 24. Section 2-4-102, MCA, is amended to read:

"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of Montana and the Montana Administrative Register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works~~;~~

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and [section 8].

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing in this chapter may be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana Administrative Register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when

there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 25. Section 35-18-503, MCA, is amended to read:

"**35-18-503. Annual fee to department of revenue -- exemption from other taxes.** Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions ~~thereof~~ of 100 persons to whom electricity or telephone service was supplied during the previous calendar year within the state and, except as provided in [section 21] and 10-4-201, ~~shall~~ are ~~be~~ exempt from all other excise and income taxes of ~~whatsoever~~ any kind or nature."

Section 26. Section 69-3-305, MCA, is amended to read:

"**69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly

has or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809.

(5) (a) A provider of regulated telecommunications service may offer, for a limited period of time, ~~either~~ rebates, price ~~or~~ reductions, or waivers of ~~installation~~ charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing ~~of services that remain fully tariffed requires~~ for services other than basic local exchange access to end users does not require advance approval of the commission. Informational price lists must be filed with the commission on or before the date that the promotion begins. Promotional offerings for basic local exchange access to end users and packaged services that include basic local exchange access to end users require advance approval of the commission. The commission shall approve, deny, or upon a showing of good cause set for hearing an application for a promotional discount within 30 days of the filing of the application. If the commission has not acted on the application within the permitted time period, the application is considered granted. ~~A promotional offering may not combine monopoly services with competitive services unless authorized by the commission.~~

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(c) The commission may define the appropriate scope of promotions, rebates, market trials, and grants and subsidized loans, either by rule or in response to complaints. The commission may determine whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities and grant and subsidized loan programs that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(6) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. ~~This, however~~ However, this does not have the effect of suspending, rescinding, invalidating,

or in any way affecting existing contracts."

Section 27. Section 69-3-801, MCA, is amended to read:

"**69-3-801. Short title.** This part may be cited as the "Montana Telecommunications Reform Act"."

Section 28. Section 69-3-802, MCA, is amended to read:

"**69-3-802. Purpose.** ~~The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates.~~ This part was adopted in response to the enactment into law of the federal Telecommunications Act of 1996, Public Law 104-104, and the work performed by the governor's blue ribbon telecommunications task force established by Chapter 508, Laws of 1995. This part expresses the policies of the state of Montana that should govern the orderly transition of the telecommunications industry in the state from a regulated industry to an industry primarily controlled by the economic forces of a competitive telecommunications marketplace. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition ~~in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services~~."

Section 29. Section 69-3-803, MCA, is amended to read:

"**69-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Advanced telecommunications services" means high-speed (56 kbps) dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

~~(1)~~(2) "Commission" means the public service commission.

(3) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a) on February 8, 1996, provided telephone exchange service in the area; and

(b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.

~~(2)~~(4) "Private telecommunications service" means a system, including the construction, maintenance, or operation ~~thereof~~ of the system, for the provision of telecommunications service or any portion of ~~such~~ the service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

~~(3)~~(5) (a) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

(b) ~~Regulated telecommunications service~~ The term does not include the provision of terminal equipment used to originate or terminate ~~such~~ the regulated service, private telecommunications service, ~~resale of telecommunications service,~~ one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

~~(4) "Resale of telecommunications service" means the resale of regulated telecommunications service, with or without adding value, provided any value added would not otherwise be subject to regulation.~~

(6) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993.

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

(7) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

(8) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."

Section 30. Section 69-3-805, MCA, is amended to read:

"**69-3-805. ~~Manner of regulation~~ Registration of telecommunications ~~service~~ providers.** (1) Before any person or entity provides ~~regulated~~ telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name, ~~and~~ address, and telephone number of the provider;

(b) ~~a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;~~

~~(c) initial tariffs for the regulated telecommunications service;~~

~~(d) such other information as the commission may require to accomplish the purpose of this chapter.~~ the name, address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the provider;

(c) a description of the provider's existing operations and general service and operating areas in any other jurisdictions;

(d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal addresses and telephone numbers of each;

(e) initial tariffs or price lists for regulated telecommunications services, including a narrative description of the regulated telecommunications to be offered and the geographic area and markets to be served;

(f) a general description of the facilities and equipment that will be used to provide services, including whether the service will be offered on a facilities basis, a resale basis, or a combination of both of them;

(g) a statement of whether the provider intends to draw from the federal or state universal service fund or other explicit support funds, including a statement of whether the provider intends to seek the commission's designation as an eligible telecommunications carrier;

(h) disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanction or within the 5 years prior to the date of filing the notice;

(i) if the provider is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the provider's agent for service of process in Montana, and the date of creation of the business entity; and

(j) other information from regulated telecommunications carriers as the commission may require to accomplish the purposes of this chapter.

(2) ~~The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter.~~ The commission may waive any of the requirements set forth in subsection (1).

(3) The provider shall file with the commission a report of any judgment, penalty, or sanction entered in any other jurisdiction that could adversely affect the provider's ability to provide communications services in Montana."

Section 31. Section 69-3-807, MCA, is amended to read:

"**69-3-807. Regulation of rates and charges.** (1) ~~As to telecommunications service that is provided under regulation, the~~ The commission may establish specific rates, tariffs, or fares for the provision of ~~the~~ regulated telecommunications service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under terms and conditions that best serve the declared policy of this state. For a service detariffed under this subsection, the provider shall maintain a current price list on file with the commission and shall provide notice of changes in the price list as prescribed by the commission. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in ~~lieu thereof~~ the alternative may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(d) provide ~~such~~ other rate or service regulation as will promote the purposes of this part.

(3) Except as provided in subsection (4), in determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) other factors that the commission may prescribe through rulemaking that are appropriate to fulfill the purposes of this part.

(4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local exchange access to end-users and carrier access services may not be detariffed.

(5) A provider of regulated message telecommunications service and related services shall average its service rates on its routes of similar distance within the state unless otherwise authorized by the commission. ~~Nothing contained in this~~ This subsection may not be construed to prohibit volume discounts, discounts in promotional offerings, or other discounts as long as the discounts are not offered in a discriminatory manner.

~~(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available.~~"

Section 32. Section 69-3-809, MCA, is amended to read:

"**69-3-809. Alternative forms of regulation.** (1) The commission may authorize a provider of regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to:

(a) price caps;

(b) price regulation; and

(c) equitable sharing of earnings or ~~revenues~~ revenue between a provider of regulated telecommunications services and its customers.

(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission's order on the petition must be issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:

(a) ~~will not degrade the quality of or the availability of efficient telecommunications services;~~

~~(b) will produce fair, just, and reasonable rates for telecommunications services;~~

~~(c) will not unduly or unreasonably prejudice or disadvantage a customer class;~~

~~(d) will reduce regulatory delay and costs;~~

~~(e)~~ is in the public interest; and

~~(f) will enhance economic development in the state;~~

~~(g) will result in the improvement of the telephone infrastructure in the state; and~~

~~(h)~~(b) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.

(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:

(a) remains subject to the same regulation that applied when the petition was filed; and

(b) may petition the commission to be regulated under a revised alternative plan.

(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an

alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.

(6) ~~Nothing contained in this~~ This section may not be construed as limiting or otherwise affecting the commission's authority to conduct investigations or hear complaints as provided in part 3 of this chapter."

Section 33. Section 69-3-811, MCA, is amended to read:

"**69-3-811. ~~Costs for services provided~~ Relevant cost defined -- jurisdiction over complaints.** (1) ~~Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.~~

~~(2)~~ With regard to competitive services, the term "relevant costs" includes the price for any components that are used by the telecommunications provider and that would be essential for alternative providers to use in providing the competitive services pursuant to commission-approved methodology.

~~(3)~~(2) The commission has jurisdiction to consider complaints and initiate investigations to determine whether the price charged by a provider of regulated telecommunications service is above relevant costs. The commission may also consider complaints that a pricing or promotional practice violates any provision of this title."

Section 34. Section 69-3-1001, MCA, is amended to read:

"**69-3-1001. Creation of program -- amount of assistance.** (1) There is a telephone ~~low-income~~ low-income assistance program to provide an eligible subscriber with a discount in the monthly charge for local exchange service in the telephone network.

(2) ~~This~~ The commission shall set the discount in the charge for local exchange service ~~is the greater of:~~

~~(a) $2~~ that is at least $3.50 a month for each eligible subscriber~~; or~~

~~(b)~~ but not more than the amount ~~necessary to obtain the matching waiver available under applicable orders and regulations of the federal communications commission~~ that is the difference between the otherwise applicable current rate for local exchange service and the rate as it was on [the effective date of this section]."

NEW SECTION. **Section 35. Codification instruction.** (1) [Sections 1 through 15] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 1 through 15].

(2) [Sections 16 through 22] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 16 through 22].

NEW SECTION. **Section 36. Repealer.** Sections 69-6-101, 69-6-102, and 69-6-103, MCA, are repealed.

NEW SECTION. **Section 37. Effective dates -- applicability -- rulemaking.** (1) Except as provided in subsection (2)(a), [this act] is effective on passage and approval.

(2) (a) [Sections 16 through 22] are effective July 1, 1997.

(b) [Section 21] applies to retail revenue for all intrastate telecommunications services received by telecommunications providers after June 30, 1997.

(c) For the purpose of allowing the implementation of [sections 16 through 22] to begin on July 1, 1997, without resorting to the adoption of emergency rules, the public service commission and the department of revenue may begin the process for the adoption of rules to implement [sections 16 through 22] prior to [the effective date of sections 16 through 22], but rules may not be adopted until July 1, 1997.

NEW SECTION. **Section 38. Termination.** [Sections 16 through 22] terminate December 31, 1999.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0089, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the laws relating to the regulation of telecommunications services in response to the Federal Telecommunications Act of 1996; providing for the registration of telecommunications providers; establishing a duty to interconnect telecommunications carriers and providing for negotiated, mediated, and arbitrated interconnection agreements; requiring limited Public Service Commission approval of interconnection agreements; providing for the designation of carriers eligible for federal universal service support; providing that the Public Service Commission may adopt rules to allow verification of a subscriber's change in telecommunications services and providing a penalty for violation of the verification rules; allowing for special ratemaking procedures; restricting the resale of certain telecommunications services; amending the laws regarding promotional offerings by regulated telecommunications providers; changing the types of regulation and criteria for alternative regulation of telecommunications providers; increasing the amount of assistance in the telephone low-income assistance program; establishing an interim universal access to the advanced telecommunications services program administered by the Public Service Commission; providing a discount for use of advanced telecommunications services for certain public access points, schools, libraries, health care providers, and tribal colleges; establishing a surcharge on retail revenue derived from intrastate telecommunications services in the state; requiring the Public Service Commission to make recommendations to the 56th Legislature regarding universal access and service.

ASSUMPTIONS:
1. The Public Service Commission will implement the provisions of this act with its existing resources, which include a consulting budget of $100,000 for the biennium. The consulting budget monies also may be used for other projects that pertain to the electric and natural gas industries.
2. The Governor's Executive Budget includes the Universal Access Program as a new proposal. The program would be funded based on the retail revenues for all intrastate telecommunication services as defined in 15-53-101(b),MCA. The funding for the 1999 biennium would be $1,500,000 (as shown in the Executive Budget), with $500,000 in fiscal 1998 and $1,000,000 in fiscal 1999. Collection of the revenues will be administered by the Department of Revenue within the proposed budget. The Public Service Commission would administer the remainder of the funds. The new proposal for the Public Service Commission is shown below.

FISCAL IMPACT:

	FY98 Difference	FY99 Difference
Public Service Commission		
Expenditures:		
Operating Expenses	500,000	1,000,000
Revenues:		
Universal Access SSR	500,000	1,000,000
Net Impact of Fund Balance:		
Universal Access SSR (02997)	0	0

Dave Lewis 1-11-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Tom Beck 1/14/97
TOM BECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0089, as introduced

SB 89

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 31, 1997, at 9:00 A.M., in ROOM 410

ROLL CALL

Members Present:
Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 89; 1/13/97
SB 242; SB 243; 1/28/97
Executive Action: None

HEARING ON SB 89

Sponsor: **SENATOR THOMAS BECK, SD 28, DEER LODGE**

Proponents: **REP. JOE QUILICI, HD 36, BUTTE**
SEN. JOHN LYNCH, SD 19, BUTTE
REP. NORMAN MILLS, HD 19, BILLINGS
Keith Colbo, Contract Task Force Director
Patrick Hogan, Touch America
Bill Squires, General Counsel, MT Telephone Assoc.
John Alke, US West Communications
Danny Oberg, Public Service Commission
Earl Owens, Blackfeet, Missoula
Thelma M. Armstrong, Eastern MT Telemedicine Network
David Espelin, Medical Complex, Baker
Cathy Brightwell, AT&T

Jeff Wilson, Clark Ct., Granite
Lois Fitzpatrick, MT Library Assoc.
James Exeaux, Director, Computer Systems/Telecommunications, Salish Kootenai College
Michael Strand, Executive Vice-President, MT Independent Telecommunications System
McCarthy Coyle, Missoula
Mark Staples, Helena Attorney, MCI

Opponents: **None**

{Tape: 1; Side: A; Approx. Time Count: 9:02 AM; Comments: N/A.}

Opening Statement by Sponsor:

SENATOR THOMAS BECK, SD 28, DEER LODGE. I am presenting SB 89. I had the dubious privilege of serving as Chairman of the Blue Ribbon Task Force on Telecommunications during the last interim. This bill is the result of what we have worked hard on for the last 18 months. I have learned much about telecommunications and I only know a fraction of this field. There are many changes coming down in the industry. There is much technology in this industry and many companies competing and getting ready to compete. Consumers have large expectations of telecommunications. Montana has a golden opportunity to bring in entrepreneurs from all over the world to do their business through telecommunications in Montana. They also want affordable rates, quality services and they want them whether they live in a town or in the rural areas.

Last year in February, Congress passed a Telecommunications Act of 1996. That Act fueled the fire to increase the amount and the importance of the issues that need to be addressed in Montana. It changes the philosophy from the Public Service Commission setting the rate to a competitive rate. This is a major change. The local telephone markets have to open up for competition. The subsidies that have existed for decades won't serve the competitive market any more. We, as Legislators, have important decisions ahead of us. We must consider and pass policies to guide and implement these changes. We must also keep in mind the citizens of Montana as we pass new policies. Another goal is to make sure new companies can offer services and invest in Montana's telephone network and to allow the existing companies who have invested in the state to compete fairly.

As Chairman of the BRTF, I have one goal in mind. That is to produce an even playing field for all parties involved in this competitive market. The next several bills you will hear will be a start down this road. This bills will address some of the issues. They will help open up the telephone market to competition. They will implement parts of the federal act that we need to have to make this market work. They begin to change regulation so that the companies we regulate will be able to

compete. They offer us the opportunity to give the citizens affordable prices. Many of the issues were consensus issues and everyone gave a little in order to reach that consensus. However, there are some issues that were controversial and those deserve further debate. I have three amendments that I propose will add to this bill and they are items we did not reach consensus on during the interim. I will run through these amendments with you now **(EXHIBITS 1 AND 1A)**. The amendments in **EXHIBIT 1A** are just clean up things, they should have been in the bill from the start.

Proponents' Testimony:

REP. JOE QUILICI, Vice Chairman of the BRTF, Chairman of the Consumer Council. This is a very important piece of legislation. I was fortunate to be on the BRTF. We tried to make this bill comprehensive since this technology touches school, libraries, etc. You will hear terms like resale, equal regulation, interconnection, etc. Please understand these and other terms before you take action on this bill. Ask questions. If though we are moving from a regulated, monopolistic environment into a non-regulated, competitive environment, this change is not going to happen overnight. We still need the Public Service Commission and the Montana Consumer Council. Section 8, Subsection 7 was discussed thoroughly. Even though two parties are in arbitration, the Montana Consumer Council will be there on behalf of the consumers in this state. This is one of the best sections of the bill. The Task Force worked hard and though there was not consensus on every issue, for the most part there was. The Committee will need to look closely at those issues of contention. There will still be changes due to the federal act, but I am hoping that this legislation will ease us into this transition period. Please make sure you understand the amendments and ask all the questions that come to your mind.

SEN. J. D. LYNCH, BRTF Member. This has been one of the most enlightening and most frustrating committees that I have ever served on over these past 18 months. We were constrained by the fact that you have to comply with the federal law, which should not have been passed to begin with. I did not endorse this bill in committee. My goal was to insure the lowest possible rates for the consumers that we represent. But at the same time, there are changes occurring as a result of the federal law that we have no control over. We must give the latitude to the PSC that there is a difference between business usage of a telephone and residential usage. We cannot, according to the federal law, continue this subsidy. The business must pay four times more than residential and that was a subsidy. They did not say that there can't be some disparity between residential and business rates. Because there is a difference--businesses make money via telephones, residents don't. This bill is the most important bill you will see for years to come. I would ask that you should study it thoroughly and try to keep the rates for the consumer as low as possible.

{Tape: 1; Side: A; Approx. Time Count: 9:21 AM; Comments: N/A.}

Keith L. Colbo, Contract Task Force Director. I served for the last 18 months as contract support staff for the Governor's Blue Ribbon Task Force. The task of the BRTF was a massive undertaking. The written summary of the BRTF was handed in **(EXHIBIT 2)**. He also handed in a letter from Deaconess-Billings Clinic Health System in regard to universal access **(EXHIBIT 3)**.

REP. NORM MILLS. I the honor of serving on this committee. I brought somewhat more experience to the committee because I have been involved in telecommunications since 1944, starting out in the Navy in radar research in MIT and from there to owning parts of three different telephone companies. I also was involved in cable TV and designed over 10,000 miles of line. I offer myself as a resource to you and hope that you will pass this bill because we need to do the best we can for the State of Montana. If we don't address this issue the federal government will do it for us. Also, in the interest of Montana consumers, we need a strong PSC and one who knows what they are doing. In the last 18 months I have come to have a great deal of respect for the PSC and their knowledge.

Patrick Hogan, Touch America. TA is an arm of the Montana Power Co. I would like to re-emphasize two points of this bill. Over 90% of what is contained in this bill had overwhelming consensus of the committee. We support the bill as is. **(EXHIBIT 4)**

Bill Squires, General Council, MT Telephone Assoc. We are here to support very strongly SB 89. I submit my written testimony **(EXHIBIT 5)**.

{Tape: 1; Side: A; Approx. Time Count: 9:39 AM; Comments: N/A.}

John Alke, Helena attorney, US West. When you are talking about a fully regulated monopoly like gas, electric and telephone, regulation offers you some wonderful opportunities. You can minimize rates for one class by keeping rates artificially high for another, etc. When competition begins you cannot do that. In fact, with the federal government's decision to blast competition in all of the states, Montana now has to deal with making its regular infrastructure comply with the federal act. The bill that has been presented to you has done an admirable job of what Montana needs. I would like to focus on the three amendments of **EXHIBIT 1.** We are in total support of these three amendments and believe that these were the original intent of BRTF.

Danny Oberg, Public Service Commissioner from Northeastern Montana. I would like to hand in my written testimony **(EXHIBIT 6)**. I must say that I am in opposition to the three amendments **(EXHIBIT 1)** and would like to state this for the record. If these three amendments are adopted, the Commission would have to withdraw its support for this bill.

{Tape: 1; Side: B; Approx. Time Count: 9:50; Comments: N/A.}

Earl Owens, General Manager, Blackfoot Telephone Cooperative, Missoula. I would like to comment on New Section 11, regarding eligible telecommunications status. The federal government has passed the telecommunications act of 1996. In the past, they have done other things that require action by Montana legislators. For many years we had a 55 mph speed limit so we could continue to get highway trust fund money. The net inflow to Montana was millions of dollars. Now the Legislature is called upon to do a very similar act which is to pass this legislation which will insure universal service fund monies continue to flow into Montana. If Section 11 is not passed, $17 Million for 1997 will stop. This will seriously hurt the rural people of Montana. The new universal service fund that is being talked about at the federal level is going to replace several of the implicit subsidies that we are receiving and supporting low rates in Montana. The new universal service fund will be many times the $17 Million. I hope you see the significance of Section 11. That is giving the PSC the right to designate eligible telecommunications carriers so that money can continue to flow into Montana and hold down rates for rural consumers.

Thelma M. Armstrong, Director, Eastern Montana Telemedicine Network. Through telemedicine, rural families that may only have a physician assistant, have the opportunity to be connected to the big hospitals and receive a medical diagnosis immediately. This is saving lives and much grief. In operation since Sep. 1993, the Eastern Montana Telemedicine Network is one of the most successful medically oriented video conference networks in the country. It is presently grant supported. In Sep 1997, we will no longer received funds. At that time the rural hospitals of Glasgow, Culbertson, Glendive, Sydney, Baker and Miles City will financial support this very expensive network. Our greatest threat to long-term viability is our telecommunications cost--$150,000 a year. We support SB 89. We also support the new universal service fund.

David Ezpelund, Eastern MT Telemedicine Network. Our complex in Baker is rather small--120 people employed. We are remote--about 80 miles away from the next larger medical facility. This bill means access to services that we don't have at our fingertips. Federal law mandates dieticians and through telecommunications we can access their expertise. Another access is timely access. In an emergency, we can have immediate access to transmitting radiology data to the experts. Another feature is the cost savings. With managed care coming, we need to cut costs even more. This bill allows us to save money on the transmission costs which are approximately $1300 a month.

Cathy Brightwell, AT&T's Assistant Vice President for Regulatory Affairs in Montana. I was a member of this Task Force and I represented long distance carriers. I was not aware of the amendments and am not prepared to address them. I will submit my

written testimony **(EXHIBIT 7)**. We support this bill without the amendments.

Geof Wilson, Clark Fork Telecommunications Coop, Granite Co. From the perspective in our area we support SB 89.

Lois Fitzpatrick, MT Library Assoc. I will submit my written testimony **(EXHIBIT 7A)**

James D. Ereaux, Director, Computer Systems/Telecommunications, Salish Kootenai College. I was a member of the BRTF and a good bill was produced for the issues that face Montanans. I submit my written testimony **(EXHIBIT 8)** and urge a Do Pass on SB 89.

Mike Strand, MT Independent Telecommunications Systems. We are here because the federal law is driving us to this point. The PSC has concerns about their regulatory authority, but new authority is given to them in this bill. We do support the amendments that have been offered.

The following people from independent telecommunications companies stood and offered their name in support of SB 89:
Independent Companies:
Wayne Vick, Sunburst, Northern Telephone
Curtiss Fleming, Range Telephone Coop
Art Isley, 3 Rivers Telephone Coop
Dan Seery, Blackfoot Telephone Coop
Conrad Eklund, Southern Montana Telephone Co.
Bob Orr, Lincoln Telephone Co

{Tape: 1; Side: B; Approx. Time Count: 10:10 AM; Comments: N/A.}

McCarthy Coyle, Missoula. I believe this bill should be modified. The rates should be the same for everyone operating in the same territory. Rural rate payers should be protected from unreasonable fees. I would like to submit amendments. I concur with Commissioner Oberg's statements on the amendments.

Mark Staples, Helena attorney representing MCI. We have argued the case for equal regulation and there is another bill in which to argue that. But I will say this, that if we get rid of this we are going to pick winners and losers. The fact is, equal regulation statute needs to be repealed if we are going to do that. As far as the "shalls and must", **REP. MILLS** says we have to give the PSC authority. **SEN. LYNCH** says we have to give them latitude. Let's not give them the authority without the latitude. The two go hand in hand. The BRTF was a masterful group. MCI supports this bill as considered, deliberated, negotiated, voted and written.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked for clarification on the two issues of universal access and universal service fund. The universal access will be paid for by the universal service fund. Is that correct. **Mr. Danny Oberg** replied that universal access was to make sure that there was a place in every community where the public could go to get access to them. This was a minimum level that we wanted Montana to have. It is minimal in its approach. The bill is designed around that concept--public access. Universal service is more delegated to keeping telephone rates to the end user at all levels especially basic service. That is not in this bill. Those bills will come later. This talks about using a funding mechanism that would insure local rates would remain affordable. **SEN. BENEDICT** asked if **Mr. Oberg** were not an opponent of any of **SEN. BECK'S** amendments or just on the equal regulation. **Mr. Oberg** said he was opposed only to the equal regulations and the changes of the "shall" to the "must".

SEN. BEA MCCARTHY asked **SEN. BECK** to re-explain his amendments. The first amendment on page 4, line 7, we would change "should" to "must" be used. You will need someone else to explain this to you. **Mr. John Alke** responded that the issue in depreciation life is huge. It is huge because if you don't have good depreciation, you don't have recovery power, and you reach a point where you cannot reinvest. Historically, the Commission has used very long depreciation life for all utilities. Technology is so rapidly advancing that you can use historical depreciation life. You have to use forward looking depreciation life. In fact, our competitors, AT&T, MCI and Sprint, they all have dramatically shorter depreciation lives in their cost structure. We don't get those shorter depreciation lives like US West unless the Commission says we get the new forward looking depreciation rate. The bill doesn't say the Commission has to accept our measure of forward looking depreciation rate, but the bill says that once they determine this rate, US West or any other incoming carrier should be able to use this rate. **SEN. MCCARTHY** stated that once the Commission determines the rate, then the carriers would have to use this rate. That covers the word change of "should" to "must".

SEN. MCCARTHY ask **Mr. Oberg** to respond. **Mr. Oberg** said that he didn't really have any disagreement with the fact that in the new environment the Commission would probably want to use forward looking depreciation lives. The Committee needs to realize that US West has picked out three places that would have substantial impacts on rates and have asked you to solidify it in law and not allow the Commission to have a proceeding to consider the merits.

SEN. MCCARTHY asked **SEN. BECK** about the second amendment. **SEN. BECK** asked the Committee to look on page 11, line 11. It is somewhat the same scenario. Read the whole section to see what it actually says. He asked **Mr. Alke** to explain this one. **Mr. Alke** asked the Committee to look at the first provision and it

isn't even kicked in until the Commission, again, first determines that there is a non-cost base, differential. For example, the basic rate for residential local/chain service right now is $13.84. That is to pick up the phone and get a dial tone. The same rate in Montana for the business customer is $35-$38. The big argument is whether those things are cost-based or not. If the Commission agrees that part of this difference is cost-based but there is a $10 difference that is not cost-based. We agree that $10 of that difference is pure subsidy, but this amendment says that they must eliminate that subsidy and the bill specifies in another part of this bill that they would have up to three years to pay their (couldn't understand one word) if they choose to do so. The amendment doesn't say the Commission has to make any determination as to what the actual costs are, but if they do in their determinations discover that there is a non-cost based differential of subsidies, then they have to remove it within three years. "Must" says they have to do that. "May" says they could simply perpetuate that subsidy and that won't work in a competitive environment. **Mr. Oberg** stated that current residential rates are $13.84 and business $35 or so. I don't know if they are good after cost study but there is a vast difference between the two. And in over time, I believe these rates will move much closer. **SEN. MCCARTHY** asked **Mr. Oberg** to look at Section 3. With Section 3, does the "may" in Section 3 negate some of what we are talking about in Section 2 because that is the part that allowed for the massive rate increase. **Mr. Oberg** said that if you change "may" to "shall" in the Section 3 then you are saying we can faze it in over three years to lessen impacts.

SEN. CASEY EMERSON asked if there wasn't something in the federal law the prohibits the $10 in there and don't we have to do something about it. **Mr. Oberg** replied that we have to have cost-based rates moving into a new environment. I believe that the law doesn't mandate exactly what we have to do. Rates should be based at cost.

SEN. BENEDICT asked again about the universal fund. **Mr. Oberg** stated that the next bill talks about benchmark affordable rates and if they exceed that, then funds will go in to help keep the rates down.

{Tape:2; Side: A; Approx. Time Count: 10:33 AM; Comments: N/A.}

SEN. BECK asked the Committee to look at page 24, line 25. This was stricken out of the law, but then we were asked to insert it back in so that all companies are on the same playing field. **Mr. Alke** asked to let AT&T respond. He said the current law in Montana is that when the PSC devises regulatory policy schemes for the telecommunications company, it must do so in an even-handed fashion. All they do must apply equally to all telecommunications providers. The proposal of the Commission just stripped this section out of the bill. They clearly want to have an asymmetrical system. The PSC wants the ability to say to

US West or someone else we don't like what your market share is so we are going to have one set of rules for you and another set for everyone else. They should not have the power to pick winners and losers. We are insisting that the law remain as it is and that is why we think this should be inserted back into the law. **Ms. Cathy Brightwell** responded that AT&T may be a large company but there are many new carriers that are coming into Montana and would like to have a choice other than the existing provider to serve them. They will not come if they, at the beginning, have to play on an equal footing with US West. We are trying to open up the local exchange industry to competition and consumers in this state may be hesitant to change companies especially at the beginning of this transition. We believe that the Commission can monitor the market and as that market changes, they can weigh that and then allow US West the flexibility it needs to be competitive in response to this new market. **Mr. Oberg** asked the Committee to look at the packet he had given them with the bill. The bottom line is the Commission serves only to protect against consumer abuse.

SEN. MCCARTHY asked **SEN. BECK** if these three amendments were presented to the BRTF? **SEN. BECK** replied that, yes, the issues were discussed but not the amendments per se. What these amendments are for, is mainly for the Committee to see what options were available and you can decide if they are worthwhile. He did stress that throughout the whole time his main concern was for an even playing field for all carriers.

Closing by Sponsor:

SEN. BECK closed. No one knows exactly where we are going to come out in the competitive market. There are things in this bill that in order to comply to federal regulations we have to have. I would ask you to consider the amendments, but ask for a Do Pass on SB 89.

{Tape: 2; Side: A; Approx. Time Count: 10:44 AM; Comments: AN 8 MINUTE BREAK BETWEEN BILLS.}

{Tape: 2; Side: A; Approx. Time Count: 10:52 AM; Comments: N/A.}

HEARING ON SB 242

Sponsor: **SENATOR JOHN HERTEL, SD 47, MOORE**

Proponents: **REP. JOE QUILICI, HD 35, BUTTE**
Mike Strand, MT Independent Telecommunications Systems
Joan Mandeville, General Manager, MT Telephone Assoc.
SEN. TOM BECK, SD 28, DEER LODGE

Opponents: **Jay Preston, Ronan Telephone Co.**

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 1-31-97
BILL NO. SB 89

Amendments
Montana SB 89
Senator Tom Beck

Amendment # 1

Page 4, line 7 - Strike "should" and insert "must"

Amendment #2

Page 11, line 11 - Strike "may" and insert "must"

Amendment #3

Page 24, Line 25, insert

(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available."

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1A
DATE 1-31-97
BILL NO. SB 89

SENATE BILL NO. 89

INTRODUCED BY BECK

BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE

AMENDMENTS REQUESTED BY THE MONTANA TELEPHONE ASSOCIATION

1. Page 11. Line 27: strike "and",

2. Page 11. Following line 27:
Insert: "(5) a summary of all actions taken by the commission to reduce regulation over the telecommunications industry; and"
Renumber: subsequent subsection

3. Page 8. Line 9:
Following "(12)"
Insert:"The Commission shall issue its final arbitration decision no later than 9 months after the date on which the telecommunications carrier received the request for interconnection under [section 6]."

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 1-31
BILL NO. SB 89

Governor's Blue Ribbon Telecommunications Task Force
Summary of Report and Legislation

Introduction:

Keith L. Colbo, Contract Task Force Director

House Bill 460:

The *Governor's Blue Ribbon Telecommunications Task Force (BRTF)* was created by House Bill 460 (HB 460) enacted by the 1995 legislature and approved by Governor Racicot. The legislative charge to the *BRTF* was to examine Montana's telecommunications infrastructure and determine recommendations to ensure the implementation of policies, practices and statutes regarding removing barriers to competition, enhancing competitiveness and increasing access to advanced telecommunication services.

BRTF Structure and Process:

The *BRTF* was made-up of four legislators and eleven members appointed by Governor Racicot. There were also fourteen ex-officio members appointed to work with the *BRTF*. The *BRTF* first met on September 22, 1995 and met at least once a month in the following months. The *BRTF* decisions were based on majority votes; however, deliberations strove for as much consensus as could be reached on all issues, including those that were very divisive. The financial support for the *BRTF* came from a $20,000 general fund appropriation and $75,000 contributed by the telecommunications industry.

Telecommunications Act of 1996 (Act):

The enactment of this measure at the federal level has wide implication for the industry and each of the states. A rule making process has been undertaken by the Federal Communications Commission (FCC) to guide the implementation of the **Act**. Some of the early rule proposals have been challenged and are now pending under appeal and review processes. It is clear that the states will have specific responsibilities to be administered by organizations such as the Public Service Commission (PSC); however, some of the details are not yet known.

Summary of Recommendations:

To encourage the transition to a competitive telecommunications marketplace and to remove barriers to competition and disincentives to investment in telecommunications deployment and use, the *BRTF* developed recommendations regarding number portability, dispute resolution, interconnection, dialing parity, regulation, competitive parity in taxation, cost/price relationships, unbundling, capital recovery, resale, and competitive rates.

Montana Universal Access Program:

To encourage widespread access to advanced telecommunication technologies in Montana's communities, the ***BRTF*** recommended the creation of a Montana Universal Access Program to be funded at $1.5 million for the biennium. The PSC would propose legislation to the 1999 legislature for the further attainment of universal service goals, taking into account the impact of the FCC rule making process and decisions resulting from the **Act**.

Importance to Rural Areas:

HB 460 recognized that "access to advanced telecommunication services is essential to ensure continued economic growth, Montana's competitive position in the global market, and a superior quality of life for Montanans". Nowhere is this a more crucial issue than in the state's vast rural areas because advanced telecommunication technologies can overcome the obstacle of geographic distance to deliver educational options, health care, and economic opportunities.

Senate Bill 89:

This bill reflects the deliberations and recommendations of the ***BRTF***. The provisions of this bill are intended to position Montana to respond to the **Act** and to encourage the transition to a competitive telecommunications market.

Section 1:

This section contains a statement of policies to guide the PSC in relation to the regulation of the telecommunications industry.

Sections 2 through 10:

These sections provide for authority to implement interconnection provisions of the **Act**, Public Law 104-104. Sections 7 and 8 represent a change from traditional regulation to one of mediation and arbitration.

Section 11:

The PSC is authorized to designate telecommunication carriers as eligible for federal universal service support in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254. This authorization applies to all telecommunication carriers notwithstanding the carrier's exemption from further regulation by the PSC.

Section 12:

This section provides that telecommunication carriers may not execute a change in a subscriber's selection of a provider except in accordance with verification procedures adopted by the PSC. This is the "slamming" provision.

Section 14:

The PSC is directed to prepare a biennial report to the Governor and legislature on the status of the telecommunications industry and the implementation of the provisions of this act.

Sections 16 through 23:

These sections provide for the creation and funding of an Interim Universal Access program. The purpose of the program is to further the goal of universal access to advanced telecommunication services in Montana. The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate telecommunication services. The PSC is directed to evaluate the interim program and report to the 56th legislature. The program in intended to provide access to advanced telecommunication services to the public as a first priority and with available funding to schools, tribal colleges, libraries and health care providers.

Section 26:

This section provides changes to the promotional offerings of the telecommunications industry.

Section 29:

The definitions section is updated to include new terms and changes as a result of the **Act.**

Section 30:

This section provides additional requirements for telecommunication providers to file notice with the PSC containing specific information.

Section 31:

This section repeals the requirement that "all providers of comparable regulated telecommunication services within a market area must be subject to the same standards of regulation". This provision is currently contained in Section 69-3-807, MCA.

Section 34:

The low-income assistance program is increased and clarified in Section 34.

Sections 35 through 38:

These are standard codification, repealer, effective date and termination sections. The termination relates to the interim universal access program.

NOTE: This summary does not contain all sections of SB 89

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 1-31-97
BILL NO. SB 89

January 28,1997

The Honorable John Hertel, Chairman
Business and Industry Committee
Montana Senate
State Capitol
Helena, Montana 59620

Dear Mr. Chairman:

The Governor's ***Blue Ribbon Telecommunication Task Force,*** authorized by the 1995 Legislature, was charged with examining Montana's telecommunication infrastructure and developing recommendations to ensure the implementation of policies, practices, and statutes regarding access to advanced telecommunication services. In December 1996, the Task Force submitted their report and recommendation to Governor Racicot encouraging the transition to a robust, competitive telecommunication marketplace and the removal of barriers to competition and disincentives to investment in telecommunication deployment. In an effort to encourage widespread access to advanced telecommunication technologies in Montana's communities, it also recommended the creation of a Montana Universal Access Program.

Access to advanced telecommunication is essential in the delivery of healthcare services in the state's rural areas. Competition and deployment of telecommunication infrastructure will hopefully drive cost down and improve the level of services available. The Universal Access Program will assist rural communities to defray transmission costs for healthcare applications.

As a member of the Eastern Montana Telemedicine Network, I can personally confirm the value of telecommunication technology used in rural healthcare delivery. Medical consultations conducted over the Eastern Montana Telemedicine Network represent significant cost savings to patients and improved access to specialty services for routine and emergency care. By conducting administrative and continuing educational activities over the network, travel expense associated with these activities have been reduced significantly. Telecommunication technology is providing vital links between providers, healthcare organizations, and community members.

Transmission cost pose the greatest threat to the long term viability of the Eastern Montana Telemedicine Network. As grant support diminishes, the cost of the network will be absorbed by this institution and our rural partners. The Montana Universal Access Program, as proposed, will assist the Eastern Montana Telemedicine Network in defraying its costs, thereby supporting healthcare communities throughout eastern Montana.

We are requesting your support in passing ***Senate Bill 89*** and approving the appropriation for the ***Universal Access Program***.

Sincerely,

Kristianne B. Wilson

Kristianne B. Wilson, Vice President
Regional Services

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 1-31-97
BILL NO. SB 89

COMMNET CELLULAR Inc.

TO: Keith Colbo, Director
Governor's Blue Ribbon Telecommunications Task Force
DATE: January 29, 1997
FROM: Russell Sarazen
RE: Senate Bill 89

Patrick Hogan

This memo is intended to ask for your assistance in adding language to Section 21 of the proposed Senate Bill 89 for clarification purposes. While the language in the current version of SB 89 says, "The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis," CommNet Cellular Inc. is concerned that the intent of the BRTF proposal is not encompassed in that sentence.

On Friday, August 16, 1996, the BRTF voted to include the following language supported by CommNet's analysis of the variation in cost structures between wireless and landline telecommunications services:

> In recognition of the different cost structures in the wireless and CATV industry, the retail revenues for these providers will be based on an equitable, per access line, revenue equivalent.

It is our understanding that the language was removed because the term "competitively neutral" was considered adequate to address our concerns. However, CommNet believes that additional language is needed to clarify our concerns. The following amendment **(bold and underlined language)** is hereby offered to clarify the intent of the BRTF:

> **Section 21. Interim universal access program – funding – surcharge rate.** (1) (a) The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate telecommunications services in the state. The surcharge must be determined by the administrator by rule. The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis **and the surcharge imposed on wireless and CATV customers will not exceed the statewide weighted average surcharge levied on other telecommunications customers.**

P.O. Box 6606 ♦ Englewood, CO 80155-6606
8350 East Crescent Parkway, Suite 400 ♦ Englewood, CO 80111 ♦ (303) 694-3234

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 1-31-97
BILL NO. SB 89

SENATE BILL NO. 89

BLUE RIBBON TELECOMMUNICATIONS TASK FORCE BILL

Senate Business & Industry Committee
January 31, 1997

Testimony of the Montana Telephone Association

Good morning. Mr. Chairman, members of the Committee, my name is Bill Squires. I am the General Counsel of the Montana Telephone Association. MTA's membership consists of 11 independent telephone companies in Montana, including six cooperatives, two small closely held companies, and three larger commercial companies, including Citizens Telecom in Libby and PTI Communications operating in the Flathead Valley, Montana's largest independent telephone company. The Montana Telephone Association strongly supports Senate Bill 89, especially after taking an active role in the BRTF process, and ultimately in drafting parts of the proposed legislation.

On behalf of MTA and its members, I would first like to express our great appreciation for the effort and guidance given us and the task force by Senator Beck, Senator Lynch, Representative Quilici, and Representative Mills. I would also like to thank Keith Colbo for going to great lengths to keep this project in focus and on time, at times against great odds.

As described by Senator Beck and Keith Colbo, we believe that this bill represents a very broad consensus among Montana's telecommunications industry and consumers. It

reflects a great deal of effort and compromise by everyone involved.

The focus of my testimony today is going to be on the part of the bill which implements the local competition provisions of the Federal Telecommunications Act of 1996. Senator Beck spoke of the main principles of this bill. Two of those principles, which overlap in large part, are the introduction of local competition and the implementation of the federal Act.

Unfortunately I have to use one of the industry's new "buzz words". "Interconnection" is the term given to the connection of two companies' telephone networks. The public has come to expect, and rightfully so, a "seamless" telephone network, where their call is routed to the desired destination, regardless of which, or how many, telephone companies actually carries that call. This has been done for some time on the long distance network. However, with the introduction of local competition, this will be much harder to accomplish, even for a call down the street.

It is interesting to note that local competition has never been prohibited in Montana. Unlike many states, and unlike the electric industry in Montana, there has never been a territorial integrity act for the telephone industry. Even so, we have not seen any appreciable competition in the local arena. The majority of Montana's terrain is difficult, and therefore expensive, to serve. Vast miles of cable must be plowed in order to serve a relatively small number of customers. Our urban areas will be the first to realize the benefits of competition, and I suspect that Montana's rural areas won't see any real benefit for some time to come. Still, we need to have all the mechanisms for local competition in place.

So, what are the new rules under which competing telephone companies will "interconnect," and how are those rules to be implemented in Montana?

The bulk of the implementation of the federal Act, and the nuts and bolts of local

interconnection, are reflected in section 2 through section 10 of SB89. Generally, Section 5, beginning at p.4, line 29, of the bill implements the interconnection duties contained in the federal Act. Every telephone company in the nation now has the obligation to connect with other telephone companies. All "local exchange companies" (those companies providing local telephone service), also have the duty to:

- allow the resale of its telecommunications services
- provide, to the extent technically feasible, number portability (the ability for a customer to keep the same telephone number regardless of the service provider)
- provide dialing parity to competitors (no requirement that extra digits or codes be dialed in order to get service from a competitor)
- provide competitors with access to rights-of-ways
- establish agreements with other telephone companies to receive and hand-off local calls

Additionally, existing local exchange companies have the duty to:

- negotiate in good faith
- provide connection at any "technically feasible point" at rates, terms and conditions that are just and reasonable
- provide to any competitor access to individual network parts or elements (i.e., the local loop, switching, etc.). These parts must be provided in such a way as to allow a competitor to combine the parts to provide telephone service
- offer wholesale services at discounted rates so the competition can "resell" the service

- allow "collocation" - a competitor's ability to locate its switching facilities in the central office of the existing company

This is the heart of local competition. A new competitor can immediately begin providing local telephone service through the existing company's network by simply reselling the company's services. This is the same product as existed yesterday, only now it is being packaged by a different retailer. By creating a new environment where competitors can use our networks to immediately start operations, Congress hopes to accelerate competition.

At the same time, Congress recognized the hardship these requirements may cause on rural telephone companies and rural customers. Therefore, some temporary exemptions were given to rural companies.

Competition should bring us decreased regulation. The federal Act clearly begins the transition from regulation to competition. Part of this transition is the voluntary, private negotiations between telephone companies for the terms of interconnection agreements. Such an emphasis was placed on private negotiations that parties can agree to terms and conditions that fall outside of the laundry list of requirements that I just listed - as long as the parties agree. Obviously, a system of "give and take" was intended.

If the companies cannot agree, they may seek mediation of their differences. If mediation is not successful, any party may ask the public service commission to arbitrate the dispute. The state commission, in our case the Montana Public Service Commission, has the duty to arbitrate the disputes. Traditional arbitration is envisioned by the federal Act, such as the type of arbitration that has been required in labor disputes for years. This is a great departure from our current system which requires the district courts to resolve interconnection disputes under Montana's condemnation statutes.

The new procedure is designed to be expedited and focus only on the issues which could not be resolved by the parties through private negotiations. Because this is intended to be resolved only between the parties, the arbitration process is limited to the two telephone companies and the Consumer Counsel. The commission has nine months from the date of an interconnection request to issue a final arbitration decision. Senator Beck's amendment to section 8(12) makes this clear as required by the federal Act. In reality, the commission will have less than four months to process the arbitration proceedings because the companies are given time up front to work out an agreement.

The arbitration proceedings are removed from the confines of the Montana Administrative Procedures Act (MAPA) for this reason. MAPA would allow greater participation in the arbitration process, as well as agency advocacy and expansion of the disputed issues. The arbitration process is designed to fit the historical arbitration model - alternative dispute resolution between private parties. It is not intended to be a prolonged rate making type process in front of the commission.

Giving the public service commission the authority to conduct these arbitrations is of vital importance in shaping the course of Montana's telecommunications industry. The federal Act specifically requires the Federal Communications Commission to arbitrate the interconnection disputes if the state commission fails to do so. We do not want the course of Montana's telecommunications industry and development determined in Washington, D.C. Those people have no idea what it takes to serve the needs of our customers, and they have no idea what our customers expect of us.

The course of what is best for Montana should be set right here.

The other part of this bill I wanted to emphasize is section 11 which grants the public service commission the ability to designate Montana companies as "eligible carriers" for

participation in the federal universal service fund. Let me explain the importance of that designation. Briefly, the federal universal service fund is a system which keeps local rates at an affordable level through contributions from interstate long distance companies. This fund has been in operation since the break-up of AT&T and the Bell system in 1984. In the new environment, all competitors must be treated equally. That means that new competitors also need access to these support mechanisms in rural areas. Recognizing the need for "quality control" with multiple providers, the federal Act requires that any company that participates in the fund must now meet eligibility requirements. The state public service commissions are given the role to control this eligibility test.

Montana local companies will receive approximately $17 million from this fund in 1997. Beginning later this year, those companies must be designated as "eligible" for those funds. Earl Owens from Blackfoot Telephone in Missoula will also speak to this issue. I need to stress that this is probably the most uncontentious part of this entire bill, and one of the most important. There is no reason to exclude Montana's participation in the federal universal service fund, and to do so would require local ratepayers to pick up that additional $17 million in local rates.

The two most important pieces of this bill for Montana's independent companies are the interconnection provisions in sections 2 through 10, and the designation of eligible carrier status for participation in the federal universal service fund in section 11. Regardless of any other issues raised in this bill, these provisions are of critical importance to the future of Montana's local exchange industry and the safeguarding of our customers from enormous rate impacts.

Again, I want to thank the Senators and Representatives that devoted such an effort to this product, and I urge the Committee to recommend that Senate Bill 89 "Do Pass" the

Senate.

Thank you for your attention, and I would be happy to answer any questions the Committee may have.

Bill Squires, General Counsel
The Montana Telephone Association
501 Bay Drive
Great Falls, MT 59404

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 1-31-97
BILL NO. SB 89

Senate Bill 89

Senate Business and Industry Committee
Montana Senate
January 31, 1997

By Request of the Governor's Blue Ribbon Telecommunications Task Force
The Regulatory Reform Act of 1997

Testimony of Commissioner Danny Oberg on behalf of the Montana Public Service Commission

Mr. Chairman, Members of the Committee and Senator Beck:

I am Danny Oberg, a Commissioner from Northeast Montana. I had the pleasure of serving as an Ex-Officio member of the Task Force. It was an extraordinary process and I am proud of the work we did and the finished product we are presenting to you today.

The Commission is pleased to be here today as a proponent of the bill and ask the Committee to send it out with a "DO PASS" recommendation as a balanced package. As written, SB 89 represents a reasonable compromise of private and public interests. We urge the Committee to reject any amendments which we believe alter the balance in this bill, harm customers and impede the development of a competitive marketplace.

The goal of the BRTF was to chart a course leading to a robust competitive telecommunication marketplace with its implicit promises of lower prices, efficiency, innovation in services and greater customer choice. SB 89 captures this goal statutorily and outlines a process to foster a competitive marketplace. It recognizes the changes in federal law, technology and regulatory reform that will move us toward this goal. In doing this, it recognizes the special circumstances of a state like Montana with its rural nature, huge distances and small population.

It is important that the Committee realize a competitive marketplace will not happen overnight or by government fiat. Rather, it must be nurtured by a set of laws encouraging private investment as well as preserving regulations which enable fair competition to develop and prosper. In this transition process, our actions must not impede the development of a marketplace nor must customers face unfairly high prices for service failures until the marketplace is fully developed and can provide full protection.

The Montana Public Service Commission (MPSC) embraces the goals of the Telecommunications Act of 1996 and the BRTF report. We are moving forward rather quickly to implement it. One of the paradoxes of the federal act is that, while over time the role of regulation will change, in the short term our agency has dramatically increased responsibilities and work load. We have been given specific new duties such as arbitrating disputes over interconnections between companies. Other challenges to us are presented by traditionally regulated companies as they seek to reprice and offer new services to position themselves for a competitive marketplace.

The BRTF report and its recommended legislation represent government at its best. The work we present to you today is the result of discussion, collaboration and compromise as the public and private sector joined together to create a vision and a plan to bring Montana into the Information Age.

Bureaucrats like me, business executives from the industry and customers sat down for many months and hammered out the package now before you.

Like all compromises, this final product in SB 89 has elements that the Commission finds objectional. We would urge the Committee to view this bill as a package which represents a balancing of interests. To the extent the Legislature chooses to alter this delicate balance, the Commission support for the bill will wane.

Therefore, with one minor exception, the Commission supports the bill in its entirety. The one exception is the Slamming Bill (LC 453) sponsored by Rep. Joe Quilici. If that bill passes, it will replace the provisions of this bill and provide a better treatment for customers who have had their telecommunication carrier changed without their consent.

Certain members of the industry may seek changes in this bill. **We urge the Committee to realize if you accept their changes you have tilted a careful balance** and the Commission could no longer support the bill. We would then ask the Legislature to revisit other areas in this bill we find adverse to the public interest and the development of a fair and pro-competitive environment. These areas include:

1. The Arbitration Section. The Commission is concerned about the exclusion of arbitrations from the Montana Administrative Procedures Act (MAPA). The Legislature is looking at a number of bills to tighten MAPA and we find it ironic that the Legislature would exempt the Commission from MAPA under this Act and at the same time work to ensure more due process in other agencies handling of administrative processes.

2. Promotional Offerings. The Commission is concerned that there are opportunities for anticompetitive behavior in the use of promotions.

3. Registration Section. The Commission believes this section would be more effective if it included a revocation process and the ability for the PSC to administer fines and penalties.

Anticipating that incumbent local providers may be making an end run around the report's recommendation to strike 69-3-807 (6), I am including a paper I presented to the BRTF on Equal Regulation. If the Committee desires, I would be most interested in making a presentation on this issue.

In summary, **the Commission asks you to support the Bill in its entirety**. If you chip away at the findings, you destroy a carefully crafted balance and tilt the bill in such a manner you may unfairly burden customers and impede the development of a competitive marketplace. Before you accede to the demands of incumbent private carriers, I ask you to be mindful of words written over a hundred years ago (1888) by James Bryce in American Commonwealth:

> He who considers the irresponsible nature of the power which three or four men, or perhaps one man, can exercise through a great corporation, such as a railroad or telegraph company, **the injury they can inflict on the public as well as their competitors**, the cynical audacity with which they have often used their wealth to seduce officials and legislators from the path of virtue, will find nothing unreasonable in the desire of the American masses to regulate the management of corporations and narrow the range of their actions.

Equal Regulation: Equal is Not Always Fair!

Prepared for
Governor's Blue Ribbon Task Force on Telecommunications

by
Danny Oberg

November 1, 1996

The Road Montana Must Travel to Arrive at the BRTF Desired Destination of Competition and Customer Choice Must Be Fair, Not Necessarily Equal

The Task Force has recognized that regulation must change in this new environment. The Commission agrees as it has been long recognized that regulation exists as a *substitute* for competition and regulation should strive to reach outcomes that competitive markets would deliver. One of the paradoxes of the Federal Act is that in the short term the duties and responsibilities of state regulators actually increase, as we strive to replace regulation with competition. State regulators in this new environment have a responsibility to create an environment which encourages new entrants to enter the marketplace, while not impeding the ability of the incumbent to become competitive.

The Commission believes the Montana law requiring equal regulation is a significant barrier to both consumer protection and granting relaxed regulation.

> **All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunication providers are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available. (69-3-807(6), MCA)**

Conceptually, it seems hard to disagree with the intent of the statute. The Commission supports the purpose of ensuring that one provider of a service is not competitively disadvantaged by regulation.

The Commission, from its experience, has found that the approach is too simplistic for complex telecommunications markets and leads to unintended consequences. "Even Playing Fields" are a "God, Apple Pie, and Motherhood" concept, but the Commission believes this definition fails to recognize varying levels of market presence and power by providers. The transition to effective competition is a process and until that state is achieved different levels of regulatory oversight are needed.

Montana's long distance carriers are now subject to a very relaxed regulatory environment. However, it took many years to reach that point. In the early years after toll markets were first opened, AT&T still had a near monopoly and carriers like MCI and Sprint had small market shares. To deregulate AT&T would have been premature, yet the full regulation of these other fledgling carriers was unnecessary and inappropriate.

Now the Commission faces a similar prospect. Competition for the local exchange is alive and not really well in Terry, Montana. Clearly, it would seem far too premature to change regulation for U S West and equally onerous to subject the new provider to the same level of regulatory oversight as U S West.

Equal Regulation is not always true equality. A US West type incumbent with 100% of market share may need full regulation as customer choice develops to protect customers from market power abuse. A new entrant, however, with no customers and no ability to set prices in the marketplace needs little regulation to protect the customer from price abuse. Customers need varying amounts of protection based upon the ability of the provider to engage in monopoly pricing practices.

As new providers look for regions to enter the marketplace and deploy capital a critical factor will be the regulatory climate of the state. New entrants will not want to jump through unnecessary hurdles that full regulation might present. The Commission would not feel the need for traditional regulation of these new companies. There is a real possibility that if the equal regulation statute remains intact the Commission has no choice. The incumbent would press for the same level of regulation as the new entrant even though the potential for pricing abuse is vastly different and effective competition has not been achieved.

Under the equal regulation statute, the Commission would have to apply full regulation to all carriers in order to insure a level of consumer protection. Until effective competition is here and most customers have real choice in the marketplace the incumbent must be regulated.

That seems like poor public policy. Task Force members must ask themselves some important questions:

1. Is it fair to regulate new entrants equally even when their circumstances are vastly different? Will it create a barrier to competition for new entrants?

2. Does equal regulation move us closer to giving Montanans real customer choice from many providers or will it act as a disincentive to the policy goals promoted by the Task Force?

3. Will it insure competitive prices for consumers or unleash monopoly power before effective competition.

The Commission believes this statute must be repealed. We encourage the Task Force to develop a statement that recognizes the transition to competition is a process and companies may need different levels of oversight until the market is robust enough to offer adequate consumer protection. The Commission has no desire to over-regulate "Ma and Pa" providers or those who have no market power to dictate prices. At the same time, Montana consumers have a right to expect that, until "effective competition" develops, those with near monopoly powers not be under- regulated.

At the very least, we believe this statute must be modified to allow some flexibility after consideration of a market test to ensure companies and markets are regulated appropriately. The Commission could consider market levels for different regions, products or customers. Some intermediate level of regulation could be developed.

Recommendation to the Task Force:

1. Adopt an amendment to the Task Force Report to include language that recognizes regulation of telephone providers should be no more intrusive than the market power of the provider. The Montana Public Service Commission is urged to adopt regulatory policies commensurate with the market power of the provider, the potential for customer choice and to promote an environment that encourages customer choice for all telecommunication services. Further, regulation on incumbent carriers should be relaxed as market power declines and customers have choices in the marketplace that assures effective competition.

2. Add a repealer to the BRTF Legislative Package. Repeal 69-3-807(6), MCA.

"The Only Bell that's Pro-Competition is Taco Bell."
--B. Roberts, CEO of MCI

It is somewhat ironic that US West and I are engaged in a debate on regulation and we appear to have switched roles. One would expect Mr. Hayhurst to not be an advocate of regulation. As a regulator, one would normally assume I would be extolling comprehensive regulation. Perhaps the current debate does suggest the truth to the argument that flexibility is going to be the critical element in the new environment.

In passing the Telecommunications Act of 1996 (TA96), Congress recognized that competition would not happen overnight. Regulators were charged with a dual role in the transition period. A primary objective was to foster an environment which would encourage the development of competition while still protecting customers from monopoly abuse from the incumbent until they truly have customer choice.

I think one of the implied promises of Congress was that TA96 should lessen regulation-- not increase it. As such I came to the BRTF with an expectation that even the Commission should recognize that and only advocate regulation consistent to achieve the goals of the Act.

Regulation has a function while a firm possess market (or monopoly) power. Economic efficiency and consumer welfare can both suffer when a firm has monopoly power to raise and successfully maintain prices or engage in business practices to unfairly preempt the development of competition. Until there is effective competition in the market place, regulation has a role.

Conversely, if a firm does not have market power it would be an abuse of government and an unnecessary and onerous burden to exercise traditional regulation on that carrier. **It is the presence or absence of effective competition that determine the appropriate level of regulation of firms in a marketplace.**

I find US West's concern for customer abuse from new entrants somewhat amusing. The fact is if a customer becomes dissatisfied with a new entrants services or prices they do not need regulation to protect them as they will be able to exercise customer choice and return to US West for their local service.

With 14 years of experience as a regulator, I am well aware that regulation, and in particular, rate of return regulation involves considerable costs, both direct and indirect. Regulatory expenses can be considerable in themselves, but perhaps of greater concern is thepossibility that the regulatory process can become an impediment to achieving the goals of TA96.

Congress recognized this in passing the TA96 which directed the states to remove barriers to competition. The MPSC believes that the Equal Regulation Statute under Montana law is a significant barrier to the development of a robust competitive environment for local exchange

services in Montana. **And I would suggest that all of the professed concerns for consumers is but a Trojan Horse for once again the monopolist local exchange provider seeking to preserve their market share through whatever means are available.**

While I obviously disagree with almost everything in US West's rebuttal to my paper of Nov 1 I must highlight a few points.

The OCC Experience

From the time of divestiture and the opening of the long distance markets in 1984 until the early 90's AT&T was a fully regulated company. They had to file rate cases under traditional regulation while their competitors were given much more regulatory freedom. AT & T was clearly a dominant carrier. It was only as competition became more robust that the Commission allowed relaxed regulation for AT & T. Even then (and continuing until today) the Commission has regarded this relaxed regulation as tentative and experimental.

It is the Commission's interpretation of the Equal Regulation statute as part of that proceeding which has led to this debate today. Under present statutes we believe all new entrants and incumbents may have to be regulated to the same degree, while there is no economic justification for such equal regulation.

The Commission Believes USWC Has Misstated AFOR

I have endorsed the concept of Alternative Forms of Regulation (AFOR) as a reasonable option in the new environment. However, the Equal Regulation Statute would effectively diminish the chances of any AFOR plan from ever being approved by the PSC. As long as equal regulation is the law any approved AFOR plan must become the regulation for all carriers or one would have unequal regulation. Therefore, I think the Commission has effectively had its hands tied in being able to work with US West on an AFOR plan.

US West Understates Regulatory Hurdles

I am almost inclined to remain silent on US West's admission that regulation is reasonable and the requirements not onerous and use it at a future date. While I think regulatory requirements are in fact reasonable for an incumbent provider with 100% or near monopoly market share, I would suggest to you that "reasonable" quickly becomes "unreasonable" for a new entrant who has no ability to set prices or abuse customers like a monopolist. New entrants have significant obstacles to overcome (customer familiarity, loyalty, brand name, etc) without having to bear the cost of full rate base-rate of return regulation, regulatory delays in changing prices, etc.

In conclusion, I would ask the BRTF to give the Commission the ability to regulate to the level that market power and the level of effective competition requires by repealing the equal regulation statute. The Congress gave some direction to the FCC which is appropriate at the state level:

".....the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunication services. If the Commission determines that--

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of customers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

Title IV- Regulatory Reform, TA 96

I would suggest to you that is good advice for Montana and the Montana PSC. Regulation should reflect the level needed as outlined above and found to be in the public interest.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 1-31-97
BILL NO. SB 89

January 31, 1997

AT&T Comments in support of Senate Bill 89

My name is Cathy Brightwell and I am AT&T's Assistant Vice President for Regulatory Affairs in Montana.

I was a member of the Governor's Blue Ribbon Task Force and actively participated during the past year and a half as the group developed the recommendation you see before you.

The members of the BRTF were carefully selected to ensure broad representation. I was originally appointed to represent the long distance industry, but the focus of the group changed dramatically halfway through the process when the Federal Telecommunications Act of 1996 was enacted last February. At that point, my role changed from an individual advocate for a large company in a highly competitive market to the primary advocate for all potential new entrants with little to no power in a market where incumbent local exchange companies enjoy, and want to protect, their monopoly position. It became very important to try to ensure that all potential new entrants, large, small, local and national, have the opportunity to provide competitive choices to all Montanans on a fair and non-discriminatory basis as required by the federal Telecommunications Act.

SB89, as a package, provides that opportunity. This collaborative proposal reflects a good balance of the positions advocated by all members where everyone had to make compromises and it is in the public interest. I urge you to pass it without amendment.

However, there is one issue that was argued and lost by representatives of the incumbent local exchange carriers for which I expect amendments. That issue has to do with the BRTF's decision to recommend elimination of the current equal regulation statute I urge you to reject the arguments which on their face appear logical and "fair." AT&T more than anyone else can relate to the incumbents

arguments. Following divestiture of the Bell System in 1984, AT&T also argued that it should be allowed immediately the same treatment as its new competitors. However, the public policy decision makers in federal courts, the FCC, and state commissions saw past our self serving pleas and knew that if AT&T with its high market share and market power were given reduced regulation, our competitors would not have had a fair opportunity to succeed. As a matter of fact, the FCC waited twelve years to lift its regulatory oversight of AT&T. During the period of **unequal** treatment, it took ten years for AT&T's long distance market share to drop from 85% to 50% and our earnings still grew because the market grew. Imagine what would happen if U S WEST, with 99+% market share, were allowed to price its services under a reduced regulatory scheme. They would be able to price their competitors out of the market and it's likely that measurable competition in the Montana local market would be delayed for many, many years.

U S WEST would have you believe that this change means they will never be treated the same as their competitors. I disagree. Eliminating the mandate to treat everyone equally gives the PSC the flexibility to monitor the market and allow U S WEST the appropriate level of flexibility to match the transition to competition as the market equalizes.

Remember that **equal** can only be **equal** if companies are equally situated in the market. Equal does not mean that a company with nearly 100% of the market be allowed the same freedoms as a company with closer to 0% of the market--it's simply not fair.

The existing Montana Telecommunications Act states that it is the policy of the state of Montana to encourage competition. Competition will not be encouraged if incumbent local exchange companies are allowed to use their market power to ensure new entrants are not given a fair opportunity to enter the market and gain customers.

Fairness results in equality--equality does not always result in fairness.

SENATE BUSINESS & INDUSTI
EXHIBIT NO. 7A
DATE 1-31-97
BILL NO. SB89

My name is Lois Fitzpatrick and I represent the Montana Library Association. The Montana Library Association has over 500 members throughout the state and include librarians in public, school, academic and special libraries.

The Montana Library Association supports SB89 and urges you to approve it. SB89's universal access is very important to libraries throughout the state. At this time, there are libraries fully equipped with the proper computer hardware and software ready to go on line. However, they are not able to bring this important resource to their communities due to the monthly charges to connect.

For example the Plains District Library pays $275.00/month; Choteau County Free Library is Internet ready but the monthly charge would be $275.00/month. White Sulpher Springs would pay $350.00/month; Glasgow City County Library, a Federation Headquarters for public libraries is Internet ready but the charges would be $220.25/month. The library at Terry which is only opened 16 hours per week would pay $130.00/ month; Lewistown Public Library would be charged $350.00/month. We are speaking of small public libraries in rural communities that are not able to pay these monthly charges. They are ready to bring much needed information to their communities. Information that will assist Montana citizens in being economically and educationally competitive in the country.

This bill will assist these libraries and libraries and schools throughout the state in bringing information to their communities. Information that is needed now. The costs of the phone charges and backhaul charges are prohibitive to many libraries and hurt everyone.

We urge you to pass SB89.

Salish Kootenai College

Box 117
Pablo, Montana 59855
(406) 675-4800

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 1-31-97
BILL NO. SB 289

Montana Senate
January 31, 1997

The Regulatory Reform Act of 1997

Testimony of James D. Ereaux
Director of Computer Systems/Telecommunications
Salish Kootenai College

Mr. Chairman, and members of the committee

As a voting member of the Governor's Blue Ribbon Telecommunications Task Force it was my privilege to work with telecommunication professionals from across Montana. We have produced what we believe are solutions and visions to guide Montana's telecommunication infrastructure into the next millennia. I urge the Committee to recommend a "**do pass**" on this bill.

The telecommunication industry in Montana has done an extraordinary job building basic telephone systems across urban and rural areas of Montana. Unfortunately, the economic and physical structures put in place in the last 50 years are no longer able to meet the quickly changing demands of people who use modern technology for business, education or pleasure. The Federal Telecommunications Act of 1996, and now Montana's Regulatory Reform Act of 1997, are the best attempts to provide a way for us to move from a regulated, monopolistic environment to an open and competitive market.

As a consumer, and coordinator of college telecommunication services, there are many parts of both bills that raise concerns both with access to and affordability of telecommunication service in rural areas, and especially Indian Reservations, all across Montana. However, we realize that a move from one era to another results in unpleasantness and hardships for many different groups. What we have attempted to craft with this bill is a balance of many interests, both consumer and industry, from across Montana. This process has taken over a year to complete and is the result of a great deal of compromise, education and hard work. It will be extremely difficult to make changes to this bill without jeopardizing the delicate balance we have worked so hard to achieve.

Therefore, I again urge the Committee to pass this bill, without amendments, to ensure a balanced, progressive and exciting path to the future.

MONTANA SENATE
1997 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 1-31-97

NAME	PRESENT	ABSENT	EXCUSED
WILLIAM CRISMORE	X		
CASEY EMERSON	X		
BEA MC CARTHY	X		
DEBBIE SHEA	X		
STEVE BENEDICT, VICE CHAIRMAN	X		
JOHN HERTEL, CHAIRMAN	X		

SEN:1997
wp.rollcall.man
CS-09

DATE 1/31/97

SENATE COMMITTEE ON Sen Bus & Ind

BILLS BEING HEARD TODAY: SB 89, 242, 243

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Bob ORR	LINCOLN Tel Co	SB 89	✓	
BOb ORR	" " "	SB 242	✓	
J.m HAYCRAFT	USWEST COMMUNICATIONS	SB89	✓	
" "	" "	SB 243	✓	
Norm Mills ✓ ✓		SB 242 SB89	✓ ✓	
		SB 243	?	?
Bill Squires	Montana Telephone Assc	SB89 SB242	✓	
Conrad EKLund	Southern Montana Tel Co	SB 89 SB 242	✓	
Rick Hays	U S WEST Comm.	SB 89 242 243	✓	
Curtiss Fleming	Ranger Tele Co	SB 89 SB 242	✓	
Art Isley	3 Rivers Tele Co	SB 89 SB 242	✓	
DAN SEERY	BLACKFOOT TEL COOP	SB 89 SB 242	✓	
Geor Wilson	Clark Fork Tel-Coop	SB 89 SB 242	✓	
Thelma McClosky Armstrong	Eastern Montana Telemedicine Network	SB 89	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 1-31-97

SENATE COMMITTEE ON Local Bus + Labor

BILLS BEING HEARD TODAY: SB 89, 242, 243

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Earl Owens	Blackfoot Telephone	SB89	X	
WAYNE L. VICK	NORTHERN TELEPHONE	SB89	X	
Nancy McCaffree	PSC	89	X	
Danny Oberg	PSC	89	X	
Danny Oberg	PSC	243		X
Karen Hammond	PSC	89	X	
"	PSC	243		X
Bob Anderson	PSC	89 243	X	X
Patrick Hogan	Touch America	89 243	X	X
Mike Strand	Montana Independent Telecommunications Systems	89 242 243	X	
Cathy Brightwell	AT+T	89	X	
Char Mahang	DOR	89		
Lenny Beeby	DOR	89		
LARRY AKEY	AT & T	242 243		X X
McCarthy COYLE	SELF	89		
John Gunnerson	PTI	89/242	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 1-31-97

SENATE COMMITTEE ON Bus & Ind

BILLS BEING HEARD TODAY: SB 89, 242, 243

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Joe Lindsay	MT Legis	SB89	✓	
David Fitzgerald	E. MT. TELEPHONE ASSN	SB 89	✓	
Joe Mackrill	Montana Tel. Assoc.	SB 89 SB242 SB243	✓	
Lois Fitzpatrick	MT. Library Assoc	89	✓	
" "	" "	242	neutral	
Robert Ekblad	Hot Springs Tel	242		✓
Jay Wilson Preston	Ronan Tel. Co.	242		✓
Chuck Evilsizer	Ronan Tel. Co.	242		✓
Barbara Ranf	USWEST Communcatn	242	✓	
Dave Fisher	PSC			
Greg Allen	AT&T	243		✓
John Alke	USWC	SB89	✓	
[illegible]	SALISH KOOTENAI COLLEGE	SB 89	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on March 7, 1997, at 9:00 A.M., in ROOM 410.

ROLL CALL

Members Present:
Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 310; HB 330; HB 331; 2/24/97
Executive Action: SB 89; HB 262; HB 266; HB 310; HB 330; HB 331; HB 350
SB 242; 243; 312 TABLED

HEARING ON HB 331

Sponsor: **REP. LOREN SOFT, HD 12, BILLINGS**

Proponents: **Mona Jamison, MT Chapter, American Lung Association**
Mark Staples, Vending Machine Operators
Darryl Bruno, Asst. Administrator, Addictive & Mental Disorders Division, DPHHS
Barbara Guthneck, Libby

Opponents: **None**

that we have heard. Various things were taken from SB 242, SB 243 and SB 312 and placed into SB 89. There were some changes in SB 89 as well. This is what we are dealing with this morning. First, we will act on SB 242, SB 243 and SB 312.

EXECUTIVE ACTION ON SB 242

Motion: **SEN. WILLIAM CRISMORE MOVED DO PASS SB 242.**

Discussion: **SEN. BENEDICT** wanted to know if there would be discussion on what went into SB 89. **SEN. HERTEL** felt that action should be taken on the first three bills.

Motion/Vote: **SEN. CRISMORE MOVED TO TABLE SB 242. THE MOTION TO TABLE SB 242 CARRIED UNANIMOUSLY: 6-0**

EXECUTIVE ACTION ON SB 243

Motion: **SEN. BENEDICT MOVED DO PASS SB 243.**

Discussion: **SEN. CRISMORE** stated that with what the committee has been working on over the past few weeks, we no longer need to have this bill around.

Motion/Vote: **SEN. BENEDICT MOVED TO TABLE SB 243. THE MOTION TO TABLE SB 243 CARRIED UNANIMOUSLY: 6-0**

EXECUTIVE ACTION ON SB 312

Motion: **SEN. CASEY EMERSON MOVED DO PASS SB 312.**

Discussion: There was no discussion.

Motion/Vote: **SEN. EMERSON MOVED TO TABLE SB 312. THE MOTION TO TABLE SB 312 CARRIED UNANIMOUSLY: 6-0**

EXECUTIVE ACTION ON SB 89

Motion: **SEN. CRISMORE MOVED DO PASS SB 89.**

Amendment: **SEN. CRISMORE MOVED TO AMEND SB 89 (EXHIBIT 8) sb008901.agp.**

Discussion: **SEN. BENEDICT** stated that he felt that things were rushed with some of the legislation we had in the committee and that was evident with the amount of testimony with all three bills and this endeavor is a much more prudent and reasonable course of action which will allow us to move into that telecommunications arena as it unfolds but without taking steps

that we might regret at a time down the road. I feel that they are very good amendments. **SEN. HERTEL** asked **Mr. Greg Petesch, Code Commissioner, Legislative Services Division,** to present and explain the amendments.

Mr. Petesch presented and explained the amendments to the committee. **SEN. MCCARTHY** asked about the yellow pages issue. **Mr. Petesch** replied that sections 19 and 24 do address the yellow pages issue. On page 22 and 23 is also part of it. This essentially takes out language in current law in section 24. **SEN. EMERSON** wondered about the universal services fund and asked if by having this fund do we have access to the national universal service if there are any funds there to be shared by Montana? **Mr. Petesch** said that the Montana fund is set up to be a compliment to the federal fund. **SEN. EMERSON** wanted to know if some oversight authority had been given to the PSC. **Mr. Petesch** said that yes the PSC has rule making authority to set up parameters for operation. The universal service fund in the amended bill is not set up as an interim universal service fund the way it was in the original SB 89. Every legislature will have the opportunity to come in and review this.

Vote: **THE MOTION TO AMEND SB 89 CARRIED UNANIMOUSLY: 6-0**

Motion/Vote: **SEN. CRISMORE MOVED DO PASS AS AMENDED SB 89. THE MOTION CARRIED UNANIMOUSLY: 6-0.**

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 8
DATE 3-7-97
BILL NO. SB 89

Amendments to Senate Bill No. 89
First Reading Copy

Requested by Senator Hertel

For the Committee on Business and Industry

Prepared by Greg Petesch
March 3, 1997

1. Title, lines 12 through 16.
Following: ";" on line 12
Strike: remainder of line 12 through ";" on line 16
Insert: "PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS SERVICES, INCLUDING INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES;"

2. Title, lines 17 and 18.
Following: ";" on line 17
Strike: remainder of liner 17 through ";" on line 18

3. Title, lines 19 through 26.
Following: ";" on line 19
Strike: remainder of line 19 through ";" on line 26
Insert: "CREATING A UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES SUPPORTED BY THE FUND AND OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM TELECOMMUNICATIONS CARRIERS BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS CARRIERS' RETAIL REVENUE; PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATELY CONTRACTED ENTITY UNDER THE DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR DISTRIBUTIONS FROM THE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS;"
Strike: "35-18-503,"

4. Title, line 27.
Strike: "69-3-801, 69-3-802,"
Following: "69-3-805,"
Insert: "69-3-806,"
Strike: "69-3-809, 69-3-811,"

5. Title, lines 28 and 29.
Following: "DATES" on line 28
Strike: remainder of line 28 through "DATE," on line 29

6. Page 2, line 3.
Strike: "and to the department of revenue"

7. Page 2, line 4.
Strike: "4"
Insert: "3"

8. Page 2, lines 6 through 26.
Strike: lines 6 through 26 in their entirety
Insert: "Under [section 13], the public service commission shall administer a contract with a third party that will manage the universal service fund for telecommunications services on a daily basis. The third party is responsible for the collection of contributions to the fund. The third party is also responsible for setting the amount of contribution based on total retail revenue of telecommunications carriers operating in Montana. The public service commission shall adopt procedural rules for the collection of the contributions. The public service commission shall also adopt rules allowing the third party to assess late fees and interest on late payments of contributions. The rules must set interest rates and penalties for late payments.

[Section 14] authorizes the public service commission to adopt procedural rules relating to the collection of contributions to the universal service fund. [Section 14] authorizes the public service commission to adopt rules for the assessment of late fees and interest on contributions to the fund.

[Section 15] requires the public service commission to adopt rules establishing affordability benchmarks for local service."

9. Page 2, line 30 through page 4, line 13.
Strike: section 1 in its entirety
Renumber: subsequent sections

10. Page 4, line 15.
Strike: "5 through 10"
Insert: "1 through 19"

11. Page 4, line 17.
Strike: in 2 places "5 through 10"
Insert: "1 through 19"

12. Page 4, line 19.
Strike: "5 through 10"
Insert: "1 through 19"

13. Page 4, line 24.
Strike: "5 through 10"
Insert: "1 through 9"

14. Page 4, line 27.
Strike: "7 and 8"
Insert: "6 through 10"

15. Page 6, line 9.
Strike: "5"
Insert: "4"

16. Page 6, line 11.
Strike: "5(2)(b)"

Insert: "4(2)(b)"

17. Page 6, line 26.
Strike: "5"
Insert: "4"

18. Page 7, line 6.
Strike: "5"
Insert: "4"

19. Page 8, line 9.
Following: "(12)"
Insert: "The commission shall issue its final decision no later than 9 months after the request for negotiations on a petition issued under [section 4]."

20. Page 8, line 13.
Strike: "5"
Insert: "4"

21. Page 8, line 28.
Strike: "8(12)"
Insert: "7(12)"

22. Page 9, line 19.
Following: "support"
Insert: ","
Following: "254"
Insert: ", and for any Montana universal service funds"

23. Page 9, line 25.
Following: ""study area""
Insert: "for federal universal service support"

24. Page 9, line 28.
Following: "determining"
Insert: "federal"

25. Page 10, line 26 through page 16, line 18.
Strike: sections 12 through 23 in their entirety
Insert: "NEW SECTION. **Section 11. Universal service policies.** The legislature finds that universally available telecommunications services are essential to the health, welfare, and economic well-being of the citizens of Montana. The federal Telecommunications Act of 1996, Public Law 104-104, requires a transition to local competition. Implicit subsidies have historically been used to further the public policy of keeping local rates to customers in high-cost areas at affordable levels. The federal act and the transition to competition require that all subsidies used to keep local rates at affordable levels be explicit. Additionally, the federal act's universal service provisions establish a system of discounts for schools, libraries, and health care providers. Securing these discounts can be dependent on state actions. In order to preserve and

advance the goal of universal service in the new competitive environment established by the federal act, the legislature finds that a new Montana universal service fund, supported by contributions from the telecommunications carriers operating in Montana, should be created that will:

(1) not duplicate the federal universal service fund mandated by the Telecommunications Act of 1996 but that will complement the federal fund by providing additional funding as necessary to ensure universal service in the state of Montana;

(2) be competitively and technologically neutral in both funding and distribution;

(3) provide a specific, predictable, and sufficient mechanism of support for high-cost areas; and

(4) allow for implementation of the federal support system for telecommunications services provided to schools, libraries, and health care providers.

NEW SECTION. **Section 12. Universal service fund established -- purpose.** (1) Pursuant to a determination of need, the commission shall establish and administer a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. The fund must provide support for the following services:

(a) voice grade access to the public switched network, including some usage;

(b) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;

(c) single-party service;

(d) access to emergency services, including access to 9-1-1, where available, and access to enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the telecommunications carrier has technical capacity to provide it;

(e) access to operator services;

(f) access to interexchange services; and

(g) access to directory assistance.

(2) The fund must support only access to the services listed in subsections (1)(d) through (1)(g) and not support the services themselves.

(3) The fund must be administered to ensure that its operation is competitively and technologically neutral.

NEW SECTION. **Section 13. Fund administrator.** (1) A fiscal agent and daily administrator must be selected to receive and distribute funds under [sections 11 through 15].

(2) The fiscal agent must be selected by the commission based upon a competitive bidding process after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with [sections 11 through 15]. The contract term of the fiscal agent must expire December 31, 1999.

(3) The fiscal agent shall provide quarterly reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission.

(4) The financial accounts of the fiscal agent must be available at reasonable times to any telecommunications carrier in the state and to the public. The commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices.

NEW SECTION. **Section 14. Contributions to fund.** (1) The fiscal agent shall collect contributions from all telecommunications carriers on a quarterly basis, based on a July 1 to June 30 fiscal year. Initial contributions to the fund may only be collected for the 2-month period prior to the effective date of distributions from the fund and must be calculated as follows:

(a) determine the total retail revenue for all telecommunications carriers for the immediately preceding calendar year;

(b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to [section 15];

(c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce an amount equal to the fund total calculated in subsection (1)(b);

(d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year; and

(e) send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least 2 months prior to the effective date of the application of the percentage.

(2) The commission shall adopt procedural rules to govern collection of the contributions required by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana.

(3) Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inherent in telecommunications carrier access rates must be directly passed through to end-user customers by a reduction in corresponding retail rates.

NEW SECTION. **Section 15. Distributions from fund -- calculation of costs.** (1) Subject to the requirements of this section, payments from the fund must be made by the fiscal agent to qualifying eligible telecommunications carriers, on a monthly basis, pursuant to rules adopted by the commission.

(2) Only eligible telecommunications carriers that offer the telecommunications services described in [section 12(1)] to all customers in a designated support area and that advertise the

availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area.

(3) Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone company's designated support area must be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other telecommunications carriers means a geographic area as established by the commission, which must be smaller than a wire center.

(4) Support for the services listed in [section 12(1)] must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.

(5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:

(a) If an additional eligible telecommunications carrier has not been designated pursuant to [section 10(3)], the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in [section 12(1)], which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs charged to long-distance companies, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(b) Upon the designation of an additional eligible telecommunications carrier pursuant to [section 10(3)] in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a),

distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.

(6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs charged to long-distance companies, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(7) In determining any proxy mechanism under this section, the commission shall use a model that:

(a) targets support to a geographic area smaller than a wire center;

(b) uses acceptable outside plant design and costing principles;

(c) uses reasonable switch design and costing principles;

(d) includes a reasonable share of the joint and common costs of the telecommunications carrier;

(e) meets standards for documenting model logic and the sources of cost data input; and

(f) meets reasonableness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators.

(8) An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services if the rates charged to an eligible telecommunications carrier by the other telecommunications carrier include a contribution for universal service funds under this section.

(9) Costs of administering the fund must be paid from the fund.

NEW SECTION. **Section 16. Discounts for schools, libraries, and health care providers.** The commission is authorized to establish intrastate discounts to schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the discounts are recovered through the federal universal service fund.

NEW SECTION. **Section 17. Wholesale pricing standards.** If the commission is requested by a telecommunications carrier to establish wholesale prices for services provided by a telecommunications carrier, the commission may not establish a wholesale price using a standardized or default discount value to

be applied to the applicable retail price.

NEW SECTION. **Section 18. Pricing of individual network elements.** (1) If the commission is requested by a telecommunications carrier to establish the prices of the individual network elements used to provide telecommunications services, the commission shall set those prices at a level sufficient to recover the actual cost of providing those elements, including:

(a) a reasonable share of the joint and common costs so that the telecommunications carrier has a reasonable opportunity to recover these costs in total;

(b) depreciation costs that are based upon forward-looking asset lives consistent with asset lives of other telecommunications carriers and that reflect an amortization of any underdepreciated investment;

(c) fill factors that recognize the spare capacity required to fulfill eligible telecommunications carrier responsibilities; and

(d) a fair return on investments.

(2) If a telecommunications carrier uses average prices for services to end users without regard to the customer's location, the commission shall similarly establish an average cost and wholesale price for each individual network element sold to other telecommunications carriers. The commission may depart from average pricing for network elements only to the extent that the retail prices to end users of a telecommunications carrier have departed from average pricing.

NEW SECTION. **Section 19. Prohibited subsidies.** The commission may not subsidize the price of any telecommunications service, including wholesale prices or the prices of individual network elements, by reducing the prices to reflect an allocation or credit of revenue from the operations of an affiliated company of the carrier of telecommunications services, including a publishing affiliate."
Renumber: subsequent sections

26. Page 17, line 4.
Strike: "8"
Insert: "7"

27. Page 18, lines 16 through 22.
Strike: section 25 in its entirety
Renumber: subsequent sections

28. Page 20, lines 3 through 21.
Strike: sections 27 and 28 in their entirety
Renumber: subsequent sections

29. Page 20, lines 25 through 27.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

30. Page 20, line 29.
Following: line 28
Insert: "(2) "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under [section 10].
(3) "Fund" means the universal service fund established in [section 12]."
Renumber: subsequent subsections

31. Page 21, line 16.
Following: "~~service,~~"
Insert: "resale of telecommunications services,"

32. Page 21, line 21.
Following: line 20
Insert: "(7) "Resale of telecommunications services" means the resale of regulated telecommunications services, with or without adding value, provided that any value added would not otherwise be subject to regulation.
(8) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission."
Renumber: subsequent subsections

33. Page 23, line 8.
Following: "sanction"
Strike: "or"

34. Page 23, line 20.
Insert: "**Section 24.** Section 69-3-806, MCA, is amended to read:
"69-3-806. Prohibition against cross-subsidization. ~~(1) No~~ A provider of regulated telecommunications ~~service~~ services may not use current ~~revenues~~ revenue earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services ~~which~~ that are not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or that are not tariffed under this chapter may not be attributed to services ~~which~~ that are subject to regulation for any reason.
~~(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.~~""
Renumber: subsequent sections

35. Page 24, line 30 through page 26, line 18.
Strike: sections 32 and 33 in their entirety
Renumber: subsequent sections

36. Page 27, line 1.

Strike: "(1)"
Strike: "15"
Insert: "19"

37. Page 27, line 3.
Strike: "15"
Insert: "19"

38. Page 27, lines 4 and 5.
Strike: subsection (2) in its entirety

39. Page 27, line 9.
Insert: "NEW SECTION. **Section 29. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Renumber: subsequent sections

40. Page 27, line 10.
Strike: "-- **applicability -- rulemaking**"

41. Page 27, line 11.
Strike: "(a)"

42. Page 27, line 12.
Strike: "(a)"
Strike: "16 through 22"
Insert: "17 through 19"

43. Page 27, lines 13 through 18.
Strike: subsections (b) and (c) in their entirety

44. Page 27, line 20.
Strike: "16 through 22"
Insert: "11 through 15"

MONTANA SENATE
1997 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE

ROLL CALL DATE 3-7-97

NAME	PRESENT	ABSENT	EXCUSED
WILLIAM CRISMORE	X		
CASEY EMERSON	X		
BEA MC CARTHY	X		
DEBBIE SHEA	X		
STEVE BENEDICT, VICE CHAIRMAN	X		
JOHN HERTEL, CHAIRMAN	X		

SEN:1997
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CS-09

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill 89 (first reading copy -- white), respectfully report that Senate Bill 89 be amended as follows and as so amended do pass.

Signed: John Hertel
Senator John R. Hertel, Chair

That such amendments read:

1. Title, lines 12 through 16.
Following: ";" on line 12
Strike: remainder of line 12 through ";" on line 16
Insert: "PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS SERVICES, INCLUDING INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES;"

2. Title, lines 17 and 18.
Following: ";" on line 17
Strike: remainder of liner 17 through ";" on line 18

3. Title, lines 19 through 26.
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Insert: "CREATING A UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES SUPPORTED BY THE FUND AND OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM TELECOMMUNICATIONS CARRIERS BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS CARRIERS' RETAIL REVENUE; PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATELY CONTRACTED ENTITY UNDER THE DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR DISTRIBUTIONS FROM THE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS;"
Strike: "35-18-503,"

TS Amd. Coord.
SE Sec. of Senate

4. Title, line 27.
Strike: "69-3-801, 69-3-802,"
Following: "69-3-805,"
Insert: "69-3-806,"
Strike: "69-3-809, 69-3-811,"

5. Title, lines 28 and 29.
Following: "DATES" on line 28
Strike: remainder of line 28 through "DATE," on line 29

6. Page 2, line 3.
Strike: "and to the department of revenue"

7. Page 2, line 4.
Strike: "4"
Insert: "3"

8. Page 2, lines 6 through 26.
Strike: lines 6 through 26 in their entirety
Insert: "Under [section 13], the public service commission shall administer a contract with a third party that will manage the universal service fund for telecommunications services on a daily basis. The third party is responsible for the collection of contributions to the fund. The third party is also responsible for setting the amount of contribution based on total retail revenue of telecommunications carriers operating in Montana. The public service commission shall adopt procedural rules for the collection of the contributions. The public service commission shall also adopt rules allowing the third party to assess late fees and interest on late payments of contributions. The rules must set interest rates and penalties for late payments.

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[Section 15] requires the public service commission to adopt rules establishing affordability benchmarks for local service."

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Renumber: subsequent sections

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Strike: "5 through 10"
Insert: "1 through 19"

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Strike: "5 through 10"
Insert: "1 through 19"

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Strike: "5 through 10"
Insert: "1 through 9"

14. Page 4, line 27.
Strike: "7 and 8"
Insert: "6 through 10"

15. Page 6, line 9.
Strike: "5"
Insert: "4"

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Strike: "5(2)(b)"
Insert: "4(2)(b)"

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Insert: "4"

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Strike: "5"
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Insert: "The commission shall issue its final decision no later than 9 months after the request for negotiations on a petition issued under [section 4]."

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Insert: "4"

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Strike: "8(12)"
Insert: "7(12)"

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Following: "support"
Insert: ","
Following: "254"
Insert: ", and for any Montana universal service funds"

23. Page 9, line 25.
Following: ""study area""
Insert: "for federal universal service support"

24. Page 9, line 28.
Following: "determining"
Insert: "federal"

25. Page 10, line 26 through page 16, line 18.
Strike: sections 12 through 23 in their entirety
Insert: "NEW SECTION. **Section 11. Universal service policies.** The legislature finds that universally available telecommunications services are essential to the health, welfare, and economic well-being of the citizens of Montana. The federal Telecommunications Act of 1996, Public Law 104-104, requires a transition to local competition. Implicit subsidies have historically been used to further the public policy of keeping local rates to customers in high-cost areas at affordable levels. The federal act and the transition to competition require that all subsidies used to keep local rates at affordable levels be explicit. Additionally, the federal act's universal service provisions establish a system of discounts for schools, libraries, and health care providers. Securing these discounts can be dependent on state actions. In order to preserve and advance the goal of universal service in the new competitive environment established by the federal act, the legislature finds that a new Montana universal service fund, supported by contributions from the telecommunications carriers operating in Montana, should be created that will:

(1) not duplicate the federal universal service fund mandated by the Telecommunications Act of 1996 but that will complement the federal fund by providing additional funding as necessary to ensure universal service in the state of Montana;

(2) be competitively and technologically neutral in both funding and distribution;

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(c) single-party service;

(d) access to emergency services, including access to 9-1-1, where available, and access to enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the telecommunications carrier has technical capacity to provide it;

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(2) The fiscal agent must be selected by the commission based upon a competitive bidding process after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with [sections 11 through 15]. The contract term of the fiscal agent must expire December 31, 1999.

(3) The fiscal agent shall provide quarterly reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission.

(4) The financial accounts of the fiscal agent must be available at reasonable times to any telecommunications carrier in the state and to the public. The commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices.

NEW SECTION. **Section 14. Contributions to fund.** (1) The fiscal agent shall collect contributions from all telecommunications carriers on a quarterly basis, based on a July 1 to June 30 fiscal year. Initial contributions to the fund may only be collected for the 2-month period prior to the effective date of distributions from the fund and must be calculated as follows:

(a) determine the total retail revenue for all telecommunications carriers for the immediately preceding calendar year;

(b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to [section 15];

(c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce an amount equal to the fund total calculated in subsection (1)(b);

(d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year; and

(e) send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least 2 months prior to the effective date of the application of the percentage.

(2) The commission shall adopt procedural rules to govern collection of the contributions required by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana.

(3) Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inherent in telecommunications carrier access rates must be directly passed through to end-user customers by a reduction in corresponding retail rates.

NEW SECTION. **Section 15. Distributions from fund -- calculation of costs.** (1) Subject to the requirements of this section, payments from the fund must be made by the fiscal agent to qualifying eligible telecommunications carriers, on a monthly basis, pursuant to rules adopted by the commission.

(2) Only eligible telecommunications carriers that offer the telecommunications services described in [section 12(1)] to all customers in a designated support area and that advertise the availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area.

(3) Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone company's designated support area must be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other telecommunications carriers means a geographic area as established by the commission, which must be smaller than a wire center.

(4) Support for the services listed in [section 12(1)] must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.

(5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:

(a) If an additional eligible telecommunications carrier has not been designated pursuant to [section 10(3)], the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in [section 12(1)], which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs charged to long-distance companies, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(b) Upon the designation of an additional eligible telecommunications carrier pursuant to [section 10(3)] in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to

geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.

(6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs charged to long-distance companies, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(7) In determining any proxy mechanism under this section, the commission shall use a model that:

(a) targets support to a geographic area smaller than a wire center;

(b) uses acceptable outside plant design and costing principles;

(c) uses reasonable switch design and costing principles;

(d) includes a reasonable share of the joint and common costs of the telecommunications carrier;

(e) meets standards for documenting model logic and the sources of cost data input; and

(f) meets reasonableness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators.

(8) An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services if the rates charged to an eligible telecommunications carrier by the other telecommunications carrier include a contribution for universal service funds under this section.

(9) Costs of administering the fund must be paid from the fund.

NEW SECTION. **Section 16. Discounts for schools, libraries, and health care providers.** The commission is authorized to establish intrastate discounts to schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the

discounts are recovered through the federal universal service fund.

NEW SECTION. **Section 17. Wholesale pricing standards.** If the commission is requested by a telecommunications carrier to establish wholesale prices for services provided by a telecommunications carrier, the commission may not establish a wholesale price using a standardized or default discount value to be applied to the applicable retail price.

NEW SECTION. **Section 18. Pricing of individual network elements.** (1) If the commission is requested by a telecommunications carrier to establish the prices of the individual network elements used to provide telecommunications services, the commission shall set those prices at a level sufficient to recover the actual cost of providing those elements, including:

(a) a reasonable share of the joint and common costs so that the telecommunications carrier has a reasonable opportunity to recover these costs in total;

(b) depreciation costs that are based upon forward-looking asset lives consistent with asset lives of other telecommunications carriers and that reflect an amortization of any underdepreciated investment;

(c) fill factors that recognize the spare capacity required to fulfill eligible telecommunications carrier responsibilities; and

(d) a fair return on investments.

(2) If a telecommunications carrier uses average prices for services to end users without regard to the customer's location, the commission shall similarly establish an average cost and wholesale price for each individual network element sold to other telecommunications carriers. The commission may depart from average pricing for network elements only to the extent that the retail prices to end users of a telecommunications carrier have departed from average pricing.

NEW SECTION. **Section 19. Prohibited subsidies.** The commission may not subsidize the price of any telecommunications service, including wholesale prices or the prices of individual network elements, by reducing the prices to reflect an allocation or credit of revenue from the operations of an affiliated company of the carrier of telecommunications services, including a publishing affiliate."

Renumber: subsequent sections

26. Page 17, line 4.
Strike: "8"
Insert: "7"

27. Page 18, lines 16 through 22.
Strike: section 25 in its entirety
Renumber: subsequent sections

28. Page 20, lines 3 through 21.
Strike: sections 27 and 28 in their entirety
Renumber: subsequent sections

29. Page 20, lines 25 through 27.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

30. Page 20, line 29.
Following: line 28
Insert: "(2) "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under [section 10].
(3) "Fund" means the universal service fund established in [section 12]."
Renumber: subsequent subsections

31. Page 21, line 16.
Following: "~~service,~~"
Insert: "resale of telecommunications services,"

32. Page 21, line 21.
Following: line 20
Insert: "(7) "Resale of telecommunications services" means the resale of regulated telecommunications services, with or without adding value, provided that any value added would not otherwise be subject to regulation.
(8) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission."
Renumber: subsequent subsections

33. Page 23, line 8.
Following: "sanction"
Strike: "or"

34. Page 23, line 20.
Insert: "**Section 24.** Section 69-3-806, MCA, is amended to read: "**69-3-806. Prohibition against cross-subsidization.** ~~(1) No~~ A provider of regulated telecommunications ~~service~~ services may not use current ~~revenues~~ revenue earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services ~~which~~ that are not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or that are not tariffed under this chapter may not be attributed to services ~~which~~ that are subject to regulation for any reason.

~~(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.~~""
Renumber: subsequent sections

35. Page 24, line 30 through page 26, line 18.
Strike: sections 32 and 33 in their entirety
Renumber: subsequent sections

36. Page 27, line 1.
Strike: "(1)"
Strike: "15"
Insert: "19"

37. Page 27, line 3.
Strike: "15"
Insert: "19"

38. Page 27, lines 4 and 5.
Strike: subsection (2) in its entirety

39. Page 27, line 9.
Insert: "NEW SECTION. **Section 29. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."
Renumber: subsequent sections

40. Page 27, line 10.
Strike: "**-- applicability -- rulemaking**"

41. Page 27, line 11.
Strike: "(a)"

42. Page 27, line 12.
Strike: "(a)"
Strike: "16 through 22"
Insert: "17 through 19"

43. Page 27, lines 13 through 18.
Strike: subsections (b) and (c) in their entirety

44. Page 27, line 20.
Strike: "16 through 22"
Insert: "11 through 15"

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 27, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 368; SB 379; SB 89
Executive Action: None

HEARING ON 368

Opening Statement by Sponsor: **Sen. Lynch,** S. D. 19 introduced SB 368. **EXHIBIT 1.**
{Tape: 1; Side: 1; Approx. Time Count: .04; Comments: None.}

Proponents' Testimony:
Dave Brown, MT Independent Machine Operators. EXHIBIT 2.
{Tape: 1; Side: 1; Approx. Time Count: 1.8; Comments: None.}

Larry Akey, Coin Machine Operators. EXHIBIT 3.
{Tape: 1; Side: 1; Approx. Time Count: 5.0; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:
{Tape: 1; Side: 1; Approx. Time Count: 5.1; Comments: None.}

Closing by Sponsor: **Sen, Lynch** closed. **Rep. Devaney** to carry.
{Tape: 1; Side: 1; Approx. Time Count: 5.9; Comments: None.}

HEARING ON SB 379

Opening Statement by Sponsor: **Sen. Lynch,** S. D. 19 introduced the bill.
{Tape: 1; Side: 1; Approx. Time Count: 6.2; Comments: None.}

Proponents' Testimony:
Jerry Lindorf, MT Consumers Finance Assn.
{Tape: 1; Side: 1; Approx. Time Count: 7.0; Comments: None.}

Don Hutchinson, Commissioner of Banking. EXHIBIT 4.
{Tape: 1; Side: 1; Approx. Time Count: 9.0; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor : **Senator Lynch** closed.
{Tape: 1; Side: 1; Approx. Time Count: 11.3; Comments: None.}

HEARING ON SB 89

Opening Statement by Sponsor: **Senator Beck,** S D 28 introduced SB 89.
{Tape: 1; Side: 1; Approx. Time Count: 15.0; Comments: None.}

Proponents' Testimony:

Rep. Quilici, HD 36.
{Tape: 1; Side: 1; Approx. Time Count: 27.8; Comments: None.}

Sen. Lynch, S. D. 19
{Tape: 1; Side: 1; Approx. Time Count: 31.5; Comments: None.}

Rep. Norm Mills, H. D. 19
{Tape: 1; Side: 1; Approx. Time Count: 36.5; Comments: None.}

Rep. Bill Ryan, H D 44. **EXHIBIT 5.**
{Tape: 1; Side: 1; Approx. Time Count: 44.6; Comments: None.}

Joan Mandeville, MT Telephone Assn. EXHIBIT 6.
{Tape: 1; Side: 1; Approx. Time Count: 45.0; Comments: None.}

Barbara Ranf, U S West, EXHIBIT 7 AND 8.
{Tape: 1; Side: 2; Approx. Time Count: 1.0; Comments: None.}

Earl Owens, Blackfeet Telephone Assn.
{Tape: 1; Side: 2; Approx. Time Count: 1.9; Comments: None.}

Mike Strand, Ex. Vice Pres. MT Independent Telecommunications. EXHIBIT 9.
{Tape: 1; Side: 2; Approx. Time Count: 5.5; Comments: None.}

Patrick Hagen, Touch American
{Tape: 1; Side: 2; Approx. Time Count: 10.6; Comments: None.}

Gary Reeves, MT Electric Coop.
{Tape: 1; Side: 2; Approx. Time Count: 11.3; Comments: None.}

David Owen, Mt Chamber of Commerce
{Tape: 1; Side: 2; Approx. Time Count: 12.4; Comments: None.}

Jim Ereaux, Salish-Kootenai College. EXHIBIT 10 AND 11.
{Tape: 1; Side: 2; Approx. Time Count: 17.6; Comments: None.}

Lois Fitzpatrick, MT Library Assn. EXHIBIT 12.
{Tape: 1; Side: 2; Approx. Time Count: 20.4; Comments: None.}

Jamie Doggett, White Sulpher Springs. EXHIBIT 13.
{Tape: 1; Side: 2; Approx. Time Count: 23.1; Comments: None.}

Jerome Anderson, CommNet Cellular One. EXHIBIT 14.
{Tape: 1; Side: 2; Approx. Time Count: 28.2; Comments: None.}

Linda Adams, A T and T Gov. Affairs. EXHIBIT 15.
{Tape: 1; Side: 2; Approx. Time Count: 31.1; Comments: None.}

Larry Akey, A T and T. EXHIBITS 16, 17, 18
{Tape: 1; Side: 2; Approx. Time Count: 38.9; Comments: None.}

Danny Oberg, Public Service Commission. EXHIBIT 19
{Tape: 2; Side: 1; Approx. Time Count: 10.11; Comments: None.}

Mark Staples, MCI
{Tape: 2; Side: 1; Approx. Time Count: 26.2; Comments: None.}

Paul Sicracki, Sprint
{Tape: 2; Side: 1; Approx. Time Count: 31.8; Comments: None.}

Opponents' Testimony:
Jay Wilson, Ronan Telephone Co. EXHIBIT 20.
{Tape: 2; Side: 1; Approx. Time Count: 35.9; Comments: None.}

Robert Ekglad, Hot Springs Telephone Co.. EXHIBIT 21.
{Tape: 2; Side: 1; Approx. Time Count: 43.2; Comments: None.}

Chuck Ebertside, Attorney. EXHIBIT 22.
{Tape: 2; Side: 2; Approx. Time Count: 12.7; Comments: None.}

Questions From Committee Members and Responses:
{Tape: 2; Side: 2; Approx. Time Count: 17.8; Comments: None.}

Closing by Sponsor: **Senator Beck** closed.
{Tape: 3; Side: 1; Approx. Time Count: 35.5; Comments: None.}

EXHIBIT 6
DATE 3/27/97
SB 89

Senate Bill 89
Telecommunications Industry Restructuring Legislation

Testimony of the Montana Telephone Association

House Business and Labor Committee
March 27, 1997

Good Morning. Mr. Chairman, members of the committee, my name is Joan Mandeville. I am the General Manager of the Montana Telephone Association. We represent six of Montana's cooperative telephone companies, two small closely held commercial companies, and three other larger commercial companies, including Citizens Telecom in the Libby area and PTI Communications, Montana's largest independent company. I am before you today in strong support of SB89.

This bill revises Montana's telecommunications statutes to implement competition for local telephone services and fulfill other requirements of the federal Telecommunications Act of 1996, including the promotion of universal telephone services. It addresses many of the crucial areas that were identified by the Governor's Blue Ribbon Telecommunications Task Force (BRTF) as requiring change in order to comply with the new federal laws. The bill represents a minimalist approach to implementation issues recognizing that many of the federal rules have not yet been implemented and federal decisions on restructuring rates in the long distance industry are still under consideration. This legislation also creates a safety net for customers located outside of Montana's major cities. Many of the rate restructuring proposals being considered by federal and state regulators could cause massive rate increases in these rural areas. This bill allows the Public Service Commission to implement a state universal service fund if it determines one is needed. This provision will sunset December 31, 1999.

Major Reasons to Pass this Legislation

⇒ Senate Bill 89 represents a very cautious approach to restructuring the telecommunications industry. Industry restructuring is in its early stages and this cautious approach is the best strategy for Montana at this time.

⇒ Senate Bill 89 does not remove any existing regulation over Montana's telecommunications industry.

⇒ Giving the Public Service Commission the ability to designate eligible carriers makes sure that Montana's rural customers continue to receive the benefits of federal support programs for high cost areas. Montana currently receives about $17 million from this

program. If this funding was discontinued, rates in some areas of Montana would increase by more than $20 per month.

⇒ Senate Bill 89 implements sections of the federal Telecommunications Act that are critical to Montana's rural telephone companies and creates a safety net for rural and low income customers if the impacts of local competition destroy the current balance between charges to long distance customers, business customers and rural or low income customers, making rates to some of our citizens unaffordable.

⇒ Giving the Public Service Commission authority to arbitrate contract negotiations between competing telephone companies complies with the federal Act, allows Montanans to make decisions that impact our State and save Montana companies the expenses involved in arbitrations before the Federal Communications Commission in Washington, D.C.

⇒ Authorizing the Public Service Commission to provide administrative functions that are required by federal programs that fund discounts to schools, libraries and health care providers assure Montana shares in new federal programs being created to help these entities take advantage of new technologies. The federal fund is estimated to be $2.25 billion.

⇒ Allowing the Public Service Commission time to review the actions of federal regulators and any state proposals to restructure rates, then determine if a universal service fund is needed in Montana, creates a safety net for rural customers.

⇒ The provisions in this bill protect Montana ratepayers while maintaining an environment that encourages investment in all areas of the state and safeguards Montana-based jobs.

Federal Implementation Issues

Local Competition: In order to bring about local competition, the federal Act requires every telephone company, both existing and new, to connect with networks operated by other telephone companies, including competitors. We refer to these provisions as **"interconnection."** Under the requirements in the federal Act, every company offering local services must abide by the Act's requirements which include: 1) not prohibiting the resale of its services; 2) allowing customers to switch local telephone companies without changing your phone number; and 3) negotiating new agreements that allow each company to charge the other for completing calls to customers on the other company's network ("reciprocal compensation"). Additionally, existing, "incumbent" companies must: 1) allow competitors to connect into their networks at any technically feasible point (at rates that are reasonable); 2) allow competitors to buy individual elements of the network (i.e. local switching, local loops, etc.) at reasonable rates; and 3) allow competitors to purchase any of its services at wholesale rates so the competitor can resell them to its customers. Small companies are initially given exemptions from some of these requirements.[1]

In the past, rates charged by one telephone company to another telephone company were usually set by the Public Service Commission and contained in tariffs that applied to all customers. With its new policies shifting to a reliance on competition, Congress decided that agreements between telephone companies should be based on individually negotiated contracts. Realizing that negotiations may be unsuccessful, Congress established a system that allows for non-binding mediation and then binding arbitration of unresolved issues. State public service commissions are the preferred arbitrator. If state commissions cannot arbitrate, then the Federal Communications Commission (FCC) will act as the arbitrator. To make sure that all companies are complying with the Act's mandates, state public service commissions are required to approve all contracts. If state commissions do not have the authority to approve the contracts, the FCC is required to approve each contract.[2]

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[1] The provisions in this paragraph are reflected in Section 4.

[2] The provisions for negotiating, mediating, arbitrating, and approving interconnection agreements are Sections 5 through 8 of Senate Bill 89.

Montana statutes currently require any disputes between telephone companies to be resolved in District Court using condemnation proceedings.[3] The Governor's Blue Ribbon Telecommunications Task Force spent considerable time working on a new regulatory regime to implement the Act. The Task Force recommended the following guidelines:

- ⇛ Arbitration is limited to the parties to the negotiation process and the Montana Consumer Counsel.
- ⇛ Arbitration must be confined to the disputed issues as certified by the parties.
- ⇛ The results of arbitration must fall somewhere within the scope of the positions taken by the negotiating parties.
- ⇛ The arbitrator should view its role as that of a referee and not a policy maker.
- ⇛ Powers of the PSC should be narrowly limited to dispute resolution of unresolved issues involving interconnection.

Senate Bill 89 fully complies with the recommendations of the Task Force. If Montana's statutes are not revised, all contracts between companies doing business in Montana will be arbitrated and approved by the FCC.

Eligible Carrier: The federal Telecommunications Act requires the FCC to establish a new federal universal service fund. This fund will replace the current federal fund. Today, the local rates charged by small companies in Montana are offset by this federal fund. Montana will receive more than $17 million in 1997. Many customers receive local rate offsets of more than $20 per month, but some receive discounts of more than $50 per month. The federal Act requires telephone companies to meet eligibility criteria to participate in the new federal high cost program. States are given the responsibility to oversee this part of the program. Before any telephone company can receive federal universal service funds, it must be designated by a state public service commission as an "eligible carrier." This legislation has provisions to give the Montana Public Service Commission (PSC) the authority to make these designations.[4]

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[3] This statute is repealed in Section 28. Repealer.

[4] Authority to designate carriers to receive universal service funds is provided for in Section 10.

Pricing Services Provided to Competitors: In passing the Telecommunications Act of 1996, Congress established a strong preference for individual contract prices determined through negotiations between telephone companies. Only when two companies cannot successfully negotiate a contract does the Public Service Commission have jurisdiction to determine prices. Many state commissions have attempted to circumvent this process by setting default prices, or "preferred outcomes," through rulemaking, or standardized proxy (hypothetical) rates. These actions render the negotiation process meaningless.

This bill does not allow the Commission to use default prices or proxy prices. Contract prices between companies must be determined based on the individual Montana costs of the companies involved and meet some minimum standards for how those rates will be set. Without these provisions, Montana's local exchange companies will be required to charge retail customers higher rates or be forced into costly court battles to force the Commission to allow them to recover their costs. That result would certainly have immediate negative impacts on the ability of existing companies to invest in Montana's infrastructure.[5]

Safety Net for Universal Service

The federal Act requires an immediate transition to local competition. Recognizing that this transition could fundamentally change the rate structures of all existing telephone companies, it also included strong mandates to continue national universal service policies. In discussing its national universal service principles, the Act says that:

> *"Consumers in all regions of the Nation, including those in high cost areas, should have access to services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."*

Although the Act reinforces the commitment to universal service, it also requires that any subsidies used to keep local rates affordable be made "explicit." In the past, mechanisms used to keep local rates at affordable levels were included in the overall rate structure. The biggest contributors to universal service were long distance services and the services provided to large urban businesses. The most likely result of eliminating subsidies in the rate structure is large reductions in the rates charged for long distance services and the rates charged to business customers. This could cause drastic rural local rates increases.

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[5] These wholesale pricing standards are set forth in Sections 17 and 18.

The timing and extent of rate restructuring is not currently known. Federal and state regulators are now reviewing a variety of rate restructuring proposals. This bill allows the Public Service Commission to create a Montana Universal Service Fund if it determines such a fund is needed to keep rates affordable. These provisions have been carefully drafted to only compliment any federal initiatives to keep rural rates affordable. It will not duplicate the federal program or allow "double recovery" of any costs and will not allow current companies to gain unfair competitive advantages.

Because the telecommunications industry is still evaluating the need and extent of rate restructuring, these provisions sunset on December 31, 1999. This will allow the 1999 legislature to let the program lapse or require revisions to the program if it determines the program is needed.[6]

Other Provisions

Low Income Assistance: This bill modified the current low income discount program. It essentially freezes local rates to customers that qualify for low income discounts. This provision offers protection for these individuals if competition results in any local rate increases.[7]

Access to Federal Discounts for Schools, Libraries, and Health Care Providers: This bill authorizes the Commission to perform any necessary functions required by the federal Telecommunications Act or the Federal Communications Commission as a prerequisite to obtaining federally funded discounts for telecommunications services offered to schools, libraries, and health care providers. The recommendation currently before the Federal Communications Commission would fund $2.25 billion for these discounts.[8]

Registration: Recognizing that the Public Service Commission will now be involved in arbitrations involving companies that are not currently operating in Montana and that may not be regulated, this bill revises the current registration requirements for regulated companies. It

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[6] The universal service provisions of Senate Bill 89 are set forth in Sections 11 through 15.

[7] Senate Bill 89, Section 26.

[8] Senate Bill 89, Section 16.

broadens the registration to include unregulated companies and provides the Commission with more information than it currently receives.[9]

Prohibits subsidies from affiliated companies: The bill reinforces the intent and direction of telecommunications policy to encourage competition by prohibiting the Commission from giving one company a competitive advantage through the use of revenues from affiliated companies. It specifically prohibits using the revenues from publishing affiliates to offset regulated rates.[10]

Repeals the equal regulation statute in Montana: The Public Service Commission and competitors have argued extensively that the current Montana statute that requires all providers of similar service to be regulated in an equal manner should be repealed. This bill repeals that statute, giving the Commission maximum flexibility on how various providers are regulated.[11]

Promotions: Recognizing the increasingly competitive nature of the telecommunications industry, this bill streamlines the process for regulated companies to offer promotional pricing for services other than basic local telephone service.[12]

Summary

Senate Bill 89 restructures Montana's telecommunications laws to comply with new federal statutes, allow local competition, and protect customers. It is a very cautious approach to industry restructuring. Without this legislation, many Montana customers will see huge local rate increases in the next few years. The Montana Telephone Association strongly supports this legislation and urges you to send it to the House Floor with a "Do Concur" recommendation.

Montana Telephone Association
Joan Mandeville, General Manager
Bill Squires, General Counsel
Helena Phone and Fax: (406)442-4316
Great Falls Phone: (406)761-8335

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9 Senate Bill 89, Section 23.

10 Senate Bill 89, Sections 19 and 24.

11 Senate Bill 89, Section 25.

12 Senate Bill 89, Section 21.

EXHIBIT 7
DATE 3/27/97
SB 89

SB 89

Last year, Congress passed the Telecommunications Act of 1996 which opens up the local telecommunications market to competition. Now Montana must ensure that the benefits of competition come to its citizens by passing SB 89.

Montana isn't like New York or even California. What's best for citizens of Montana needs to be determined by the people of Montana, the Legislature and the Public Service Commission. Legislation is needed to establish basic guidelines for fair and open competition and to implement essential provisions of the Federal Telecommunications Act.

Montana's local telephone companies who support SB 89 say:

Legislation is needed in 1997

- The Montana legislature and public service commission should decide what's best for Montana.
- Small local companies should continue to receive $17 million in federal support to keep telephone rates in rural areas affordable.
- Montana schools, libraries and rural health care facilities can receive federal funds to purchase discounted advanced telecommunication services.

Put the mechanism to create a state universal service fund in place now

- Only activates if needed to keep local rates affordable.
- Montana public service commission determines if, when and how it is activated.
- Requires long-distance companies to pass on to consumers any reduction in charges they pay local phone companies for using the local network.

The opponents say.....

Legislation isn't needed

- The Federal Communications Commission should decide what's best for Montanans.
- Small Montana telephone companies should lose $17 million and should increase local telephone rates as a result.
- Montana schools, libraries and health care facilities should get left behind.

Wait until 1999

- But, do away with charges long-distance companies pay for using the local telephone companies lines. That's $20 million Montanans would pay on their local phone bills so long-distance companies pay nothing.
- But, base wholesale prices for local phone service on geographic cost to serve area (i.e., $10 in town and $96 plus in rural areas).

Require wholesale prices to cover actual Montana costs

- The commission shouldn't use federal default prices, based on costs in large metropolitan areas. They should use actual Montana costs.

- When the commission sets wholesale prices that a local company must sell its services to competitors, those prices must cover actual Montana costs.

- Retail customers of local telephone companies should not have to subsidize below-cost discounts to new competitors.

- Requiring actual cost will help ensure that local companies can continue to invest in Montana's telephone network.

Prohibit "phantom" subsidies required on regulated companies

- Regulated companies should not have to pretend they receive profits from an affiliate company (that only offers competitive products) to artificially suppress the revenues they are allowed to recover rates for regulated services.

- There is no profit received from the publishing affiliate - yellow pages.

- Removing the ability to put phantom profits in the revenue a regulated company is allowed to recover will only raise rates <u>if</u> that company files a full rate case with the public service commission and the commission allows it.

Don't set state price standards

- Competitors should have the option of federal default prices rather than have to pay what it actually costs to provide telephone service in Montana.

- Prices should be based on what it would cost if the telephone network were built today using the best technology - not on what it actually cost.

- AT&T and MCI need below cost prices so they can enter the local telephone market and target the biggest business customers, leaving rural customers out in the cold.

- Prices based on actual cost are anti-competitive.

Continue this game of pretend

- While advocating the immediate removal of all subsidies between regulated telephone services, say that this "phantom" subsidy shouldn't be removed.

- A regulated company shouldn't be allowed to reorganize their business. After all, they use to own yellow pages.

- This will increase telephone rates.

Montana Independent Telecommunication Systems
Montana Telephone Association
U S WEST Communications

EXHIBIT 8
DATE 3/27/97
SB 89

House Business and Labor
SB 89
Testimony of Barbara Ranf
U S WEST Communications
March 27, 1997

Mr. Chairman and members of the House Business & Labor Committee. I am Barbara Ranf, representing U S WEST Communications.

U S WEST Communications supports SB 89.

This legislation is critical -

- Implements policies that we need for the next several years as Montana's telecommunications market begins to move to a competitive market.
- Allows Montana to make decisions about the state's telecommunications policies and practices.
- Facilitates the negotiation process so new companies can bring competitive choices to Montanans.
- Allows for fair and competitive pricing for services sold to new competing companies.
- Creates a safety net to protect affordable telephone rates in Montana.

SB 89 is fair -

- Ensures that Montana's citizens will begin to enjoy the benefits of competition as it unfolds in the state.
- Allows new competitors to enter the local telecommunications market with minimal or no regulation.
- Allows existing companies to cover the actual cost of building their telecommunications network in Montana as they begin to compete with a host of new competitors.

While we support the bill in its entirety, I want to focus my testimony on Sections 17, 18 and 19 (pages 23 & 24).

Sections 17 and 18 deal with wholesale pricing.

The Federal Telecommunications Act of 1996 mandates that local telephone companies sell their services and network to new competitors at discounted wholesale prices. These new competitors can then resell those items to Montana customers as their own.

These discounted wholesale prices are negotiated between the two companies - and then approved by the Public Service Commission.

In Montana, U S WEST Communications has:

- 6 signed agreements to resell our services or parts of our network.
- 2 negotiated agreements which still need to be filed for approval.
- 11 different negotiations in process.
- 1 arbitration in process.

When the negotiating companies cannot reach agreement, they go before the Public Service Commission for arbitration - that is when these two sections would apply.

These sections, simply put, say that when government sets wholesale prices it must ensure that they are based on actual Montana costs and are priced to cover their actual cost - no below cost pricing.

Actual costs of doing business must be paid so a company can be viable and have the money to invest to maintain, expand and innovate its telecommunications network in Montana.

Also - if new competitors entering Montana's market pay below cost prices - then who pays the difference. Customers that don't have choices either because competitors haven't entered their local market or choose not to market competitive to them services (some new competitors only want to resell business services) and customers who make the choice to stay with their current local telephone company.

Section 17 says that the commission cannot use standardized or default prices.

- Prohibits the PSC from using federal "default" prices set by the Federal Communications Commission. When the FCC set those prices, it took a sampling of costs from large East Coast cities, developed a formula, and then assumed what it might cost in states like Montana. Those default prices can be used by a state if it doesn't want to -- or simply doesn't -- set its own prices. It also prohibits a regulatory agency from setting standardized -- one-size-fits-all -- discounts. For example, the discount wholesale price or formula that covers the actual cost for U S WEST Communications would not be appropriate to apply to Mid-Rivers Telephone Cooperative in eastern Montana.

Section 18 says that the commission, when setting wholesale prices, must base them at a level sufficient to pay the actual Montana cost of providing those services.

- This section does not pre-determine what wholesale prices the commission will order, but only says that government cannot mandate prices below their actual cost.
- It also contains elements the commission must consider -- such as business overhead, depreciation, spare capacity (equipment) needed to

provide services to an area and allow for growth, and profit.

- In an arbitration - both sides will present their view of what these elements should be to the commission. The final determination is made by the commission from that information.

Subsection (2) of this section says that the commission must establish wholesale and retail pricing based on the same average pricing principles.

- An example of average pricing is that a consumer pays the same, or a similar, rate for residential service from a telecommunications carrier whether they live in the city or way out in the country.....even though the cost of providing that service is significantly higher in a rural area than in an urban area.
- A proposal recently requested by a company asked that wholesale telephone rates be based on the cost in different geographic areas -- they ranged from about $10/month in Montana's urban areas to more than $95/month in Montana's rural areas.
- If wholesale prices are based on this scenario, while a regulated company's retail rates are averaged on a statewide basis, it's obvious to see what happens. The problems of cherry picking in urban areas, to the detriment of rural areas, is increased.

During the Senate hearing, AT&T expressed concern that this language could interfere with an interconnection dispute between them and U S WEST Communications in front of the PSC. That's not the intent and we moved the effective date of these sections out to July 1 to avoid any problems. The order from the PSC on their ruling was issued last week - and that order is now in the phase where Motions for Reconsideration can be filed by April 21 - after which the PSC will issue its final order.

Section 19 reinforces the competitive intent and direction of telecommunications policy in Montana and under the Federal Act by stating that.....financial results of a separate affiliate company cannot be considered in determining the prices of telephone service. In addition, Section 24, page 32, lines 6 and 7) removes language from current statute which allows this to happen.

This section has become known as the Yellow Page issue.

- When the Bell System was broken up in 1984, the Baby Bells....companies like Mountain Bell (now U S WEST Communications)....were allowed to continue publishing yellow pages.
- We put yellow pages into a separate company. Today, that yellow pages company (U S WEST Dex) is a separate affiliate, with separate stock and shareholders.

- The PSC, started a practice where it still considered profits from that separate company when it set the rates it allows U S WEST Communications to earn.
- How it works today -- during a rate case the PSC determines how much revenue we should be allowed to earn to cover our costs. They then subtract out phantom profits (there is no actual money involved) from what they think we would still get today if yellow pages wasn't a separate company. After that subtraction, they set the rates we charge so we recover the revenue we are allowed to earn.
- Today, there are more than 35 different telephone directories published by at least 7 different publishing companies in Montana. However, this practice is only applied to one publishing company and one regulated telephone company.
- This is a historical practice which no longer has a place in a competitive market. The Federal Telecommunications Act voids and replaces the decree which broke up the Bell System. This practice of considering phantom profits, which resulted from that decree, is no longer appropriate and is in fact anti-competitive.
- Opponents say that this will increase residential rates by $1.40/month. We say that SB 89 doesn't contain anything which will increase residential rates -- but puts rate decisions in the hands of the PSC. How can there be two, such different, perspectives?
- If this section is deleted, U S WEST Communications would have to present a full rate case to the Public Service Commission. The PSC would determine, overall, the revenues we would be allowed to earned based upon today's information of what are current costs are. Once that is determined, the PSC wouldn't be able to subtract out phantom yellow page profits from a separate affiliate. The PSC would then set the rates we are allowed to charge -- just as they do today.
- It's a long road from SB 89 to a conclusion that the PSC would determine that our costs are exactly the same as they were in 1988 and then put all that difference on residential local telephone service.

We believe that SB 89 is a balanced piece of legislation. Its passage is critical. And, it will get us down the road to a fair and competitive Montana market over the next several years. By 1999, we will all have a better idea of how competition will unfold in Montana, what the FCC's interpretations of the federal law really are, and will be able to consider further telecommunications policy needs for Montana.

We urge you to concur in SB 89.

Prohibiting Subsidies from Affiliated Companies
The Yellow Page Issue

When the Bell System was broken up in 1984, Mountain Bell (now U S WEST Communications) moved its competitive directory publishing business to a separate subsidiary. U S WEST Direct (now U S WEST Dex) is a separate company from U S WEST Communications which offers local telephone services. The two companies have separate stock and shareholders as well as separate organizations and employees.

- In the early years of the telephone industry, telephone companies produced directories as a means of promoting the network. This became a regulatory requirement in many states. Monopoly telephone service spawned the development of "utility" directories. There is no longer only a "utility" directory. Today, the telephone directory publishing industry is a competitive industry. U S WEST Dex is one of many competitors in this industry. In Montana alone, there are more than 35 different telephone directories published by 7 different publishing companies.

- Yellow Pages publishing is not part of the telephone service provided by U S WEST Communications. U S West Communications Montana customers bear none of the costs or risks associated with publishing Yellow Pages. Therefore, it is inappropriate to treat their profits as if they were earned by U S WEST Communications. U S WEST Communications is mandated to subtract profits (which it does not receive) from another company to reduce the amount of revenue the PSC allows it to earn when no other competitive directory provider is mandated to do this. (None of the expenses from the Yellow Pages affiliate are considered by the PSC.)

- U S WEST Communications sells its white page listings to all competitive providers of directories under the same terms and conditions. U S WEST Communications makes its listing of telephone numbers available to any publisher that requests them (under the same terms and conditions), yet only U S WEST Dex's profits are applied to USWC. No other local service company has profits from any of the many directory publishers applied to them - or from any other affiliate company.

- By pretending that U S WEST Communications has earned the profits belonging to another completely different company, The Montana Public Service Commission is perpetuating out-dated and inappropriate support. Government imposed regulations like this inhibit competition, skew the free marketplace and harm Montana's consumers.

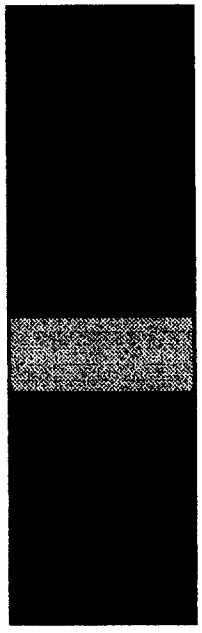
- By artificially keeping prices down, these "phantom" Yellow Pages subsidies are a competitive disadvantage for competitors. This practice is anti-competitive.

- This practice resulted from the AT&T Consent Decree (the order breaking up of the Bell System). The Federal Telecommunications Act of 1996 specifically, in Section 601, voids that decree. As we move forward into a competitive market, this historical practice is no longer appropriate.

SB 89

Montana average U S WEST residential telephone bill

$52.69



Interstate long-distance ($26.05)
(offered by companies such as AT&T and MCI)

Instate long-distance ($7.39)

Features ($4.65)

Local service ($14.60)

- **The immediate impact of SB 89 on your telephone bill is**

$ 0

- **The long-term impact of SB 89 on your telephone bill is up to the Montana Public Service Commission**

EXHIBIT 9
DATE 3/27/97
SB 89

House Business and Labor Committee
Testimony of Montana Independent
Telecommunications Systems
in Support of SB 89

My name is Mike Strand. I am the executive vice president and general counsel for Montana Independent Telecommunications Systems (MITS). MITS represents a number of telephone cooperatives and independent rural telephone companies operating here in Montana.

The Federal Telecommunications Act of 1996 has at its core essentially two themes. The first theme is the development of greater competition in the telecommunications industry. Congress felt that competition would bring lower prices and greater choice for most of the nation's consumers.

Congress recognized that the benefits of competition would not, however, necessarily flow to all areas of the country and all segments of our population. For example, competitors might not flock to serve persons with low incomes or persons in rural areas that are expensive to serve. For that reason, the second major theme of the Act is universal service. Universal Service was, up until the passage of the Act, the long standing but largely unwritten state and national policy of ensuring that a basic level of telephone service was available to all Americans at affordable rates. The Act codified that policy in federal law, set forth certain principles to guide regulators, and proposed certain funding mechanisms to ensure universal service.

One of those funding mechanisms is the Federal Universal Service Fund. This fund has been in existence since the mid-1980s and provides support for local rates in areas where the cost of providing service is significantly higher than the national average. This would include most of the geographic area of Montana, and in fact every local telephone company in Montana except U S WEST currently receives these funds to keep local rates affordable. The Act required the FCC to keep the Federal Universal Service Fund in place and restructure the fund as it deems necessary.

However, Congress recognized that in the transition to a competitive telecommunications marketplace, the Federal Universal Service Fund might not by itself be sufficient to ensure affordable rates in rural and high-cost areas. For that reason the Telecommunications Act expressly authorized the creation of state universal service funds. Twenty-six states have already done so and most of the rest are currently creating them.

SB 89 allows for the creation of a state universal service fund in Sections 10 through 15. These are what I believe to be the salient features of SB 89 in this regard:

1) A state fund will only be created if, in the judgment of the Public Service Commission, the fund is necessary to keep rates for basic local services affordable.

2) The fund will only pick up where the federal funding leaves off. There will be no duplication of funding and no state funding at all if federal funds are sufficient.

3) Even if the PSC creates a state fund, that fund will terminate in two years unless the legislature expressly authorizes the fund to continue.

4) All telecommunications carriers in the state will contribute to the fund, based on their Montana retail revenues.

5) Distributions from the fund will be made to companies serving high-cost areas based on the difference between the costs of serving those areas and an affordability benchmark established by the PSC, after federal funding has been taken into account.

6) New competitors may be eligible for distributions from the fund as long as they provide the indicated services and are designated as eligible carriers by the PSC.

7) The day-to-day management of the fund will be accomplished by a third-party fiscal agent under contract with the PSC.

In addition to the state fund, there are two other provisions of SB 89 aimed at implementing the universal service concerns expressed in the Federal Telecommunications Act:

1) The Federal Act requires that discounts be made available for services provided to schools, libraries and rural health care providers. In Section 16, SB 89 clarifies that our PSC has the authority to pass along any federal funding that is made available for intrastate discounts.

2) There is currently a low-income program in place whereby local companies provide a $3.50 per month discount to qualifying customers and the FCC matches that for a total of $7.00. Section 26 of SB 89 would allow that discount to increase in the event that local rates increase.

All of these provisions flow from Congress' recognition that competition does not necessarily benefit all customers and may actually harm many customers in the absence of other protections. This view appears to have some merit, given that more than a year has passed since the Telecommunications Act was signed into law and competition has thus far focused almost exclusively on the nation's large metropolitan areas.

On behalf of its members and their rural Montana customers, Montana Independent Telecommunications Systems urges a "do pass" recommendation on SB 89.

EXHIBIT 10
DATE 3/27/97
SB 89

TESTIMONY REGARDING SENATE BILL 89
HOUSE BUSINESS AND LABOR COMMITTEE
THURSDAY, MARCH 27, 1997

BILL COCHRAN, MEMBER
GOVERNOR'S BLUE RIBBON TELECOMMUNICATIONS TASK FORCE

Mister Chairman, members of the Committee, for the record, my name is Bill Cochran and I am providing testimony on this bill as a member of the Governor's Blue Ribbon Telecommunications Task Force, appointed by Governor Marc Racicot to represent the Montana library community.

I joined every member of the Task Force in voting for the original version of Senate Bill 89, which included provisions for a universal access program to help connect community access points, schools, libraries, and rural health care providers to advanced telecommunications services in the many communities in Montana without local connections.

This program was a step towards the achievement of the vision I shared at the initial Task Force meeting of September 22, 1995, that our work would result in the creation of "an 'information safety net' that will provide statewide public access to the exploding world of electronic information through libraries, schools and other public institutions," while "it builds markets for telecommunication services by expediting their introduction throughout the state."

The universal access program received the unanimous approval of the Task Force, including each of the four legislative members and all of the representatives of the industries, it was included in the Task Force bill following review by the Governor's office, and received only favorable testimony at the Senate Business and Industry Committee hearing on January 31, 1997.

Yet the program was stricken from the bill, for reasons I have been unable to determine, at a brief March 7 hearing prior to its consideration by the full Senate on March 12. With the unexplained striking of the universal access program, I must withdraw my support of the bill. The return of the program to the bill, even at a reduced funding level, would regain my support of the bill.

The restoration of the universal access program to the bill, while protecting against all possibilities of duplication of federal funds, will keep Montana from risking the loss of two years worth of further deployment of advanced telecommunications services into its rural communities if a federal program is delayed, doesn't apply to the specific obstacles those communities are facing, isn't adequately funded, or isn't ever actually created.

Amendment to Senate Bill 89

Second Reading (Yellow) Copy
Requested by

Prepared by Jim Smith, Montana Library Association
March 21, 1997

1. Page 13, Line 9 thru Page 17, Line 13..

Reinsert New Sections 16, 17, 18, 19, 19, 20, 21, 22, 23.

This amendment reinstates the Universal Access Program originally contained in Senate Bill 89.

The amendment authorizes a surcharge on the retail revenue for all intrastate telecommunication services in the state. The surcharge is to be set by the Administrator (Public Service Commission) by rule. The rate of the surcharge must be set to raise $500,000 during the year ending June 30, 1998 and $1 million during the year ending June 30, 1999 (Section21).

Funds will be used to establish at least one access point for advanced telecommunications in each community in Montana thru a local school, library or medical facility.

Salish Kootenai College

Box 117
Pablo, Montana 59855
(406) 675-4800

Montana House of Representatives, Business and Labor Committee
March 27, 1997
The Regulatory Reform Act of 1997

EXHIBIT 11
DATE 3/27/97
SB 84

Testimony of James D. Ereaux
Director of Computer Systems/Telecommunications
Salish Kootenai College

Mr. Chairman, and members of the committee

As a voting member of the Governor's Blue Ribbon Telecommunications Task Force it was my privilege to work with telecommunication professionals from across Montana. Unfortunately the events which transpired toward the end of our deliberations, and continued into the Senate hearings, leave me quite disappointed. What was ostensibly created as a process to move Montana's telecommunication infrastructure into a modern, competitive and responsive system ended up, I believe, as laborious way to recreate the past—albeit more expensively. We consumers affectionately call the BRTF bill the Montana Re-regulation Act of 1997. It is my opinion telecommunication companies in Montana have used the process to tighten their monopolistic grip in a state which is not supposed to have monopolies or franchises. One telecommunication provider related to me several weeks ago, "We'll let MCI, AT&T and US West slug it out. Maybe after five years we'll start looking at competition." This from one of the larger telcos in Montana.

It is BRTF consumer representatives' opinion that we were systematically excluded from many deliberations both at the latter stages of the BRTF study and during the "negotiations" which were conducted in the Senate. During Senate deliberations industry representatives gained all of the concessions they desired and the only legislation the consumers really wanted—the Universal Access proposal—was removed.

Although the industry representatives' opinion is that the Universal Access program is no longer needed, it is our opinion this is not correct. The Universal Service funding and education discounts **proposed** by the Federal government are by no means assured and are being challenged by many telecommunication providers. In our early BRTF deliberations the idea of Universal Service extended to providing a single discounted telephone line to a household. Montana telecommunication companies say this is not enough. They say we need to take the money designated for Universal Access to discount additional telephone lines so they can support, in their words, "...residential lines (Internet lines, fax lines, "teenagers" lines)...for many rural business, ranches and farms to effectively operate." It was the consumers' assumption that competition will solve this problem—after all, isn't that what this process is all about? In addition, the Universal Service language, which supposedly replaces the Universal Access program, makes no mention of community initiatives or Tribal Colleges in its language.

I urge you to reinstate the Universal Access program to ensure that communities, libraries, schools, health organizations, and Tribal Colleges can receive partial relief from the exceptionally high charges levied upon them for transport costs to reach points-of-presence for data services. Without the Universal Access program it will be difficult for many communities, schools, libraries, health organizations and Tribal Colleges to afford high rates for data connectivity.

If the Universal Access language is not reinstated then the consumer members of the BRTF committee oppose passage of the Montana Telecommunication Act of 1997.

there is not a local Internet provider and therefore libraries and citizens have to pay long distance charges to connect with the closest provider.

I urge you to consider replacing the Universal Access Program that was removed in the Senate Committee.

EXHIBIT 12
DATE 3/27/97
SB 89

TESTIMONY FOR SB 89 3/27/97

My name is Lois Fitzpatrick and I represent the Montana Library Association. The Montana Library Association has over 500 members throughout the state and include librarians in public, school, academic and special libraries.

The Montana Library Association supports SB89 if an amendment to add back into the bill the Universal Access Program. SB89's universal access is very important to libraries throughout the state. At this time, there are libraries fully equipped with the proper computer hardware and software ready to go on line. However, they are not able to bring this important resource to their communities due to the monthly charges to connect.

The following figures were gathered in January and therefore are subject to change. For example the Plains District Library pays $275.00/month; Choteau County Free Library is Internet ready but the monthly charge would be $275.00/month. White Sulpher Springs would pay $350.00/month; Glasgow City County Library, a Federation Headquarters for public libraries is Internet ready but the charges would be $220.25/month. The library at Terry which is only opened 16 hours per week would pay $130.00/ month; Lewistown Public Library would be charged $350.00/month. We are speaking of small public libraries in rural communities that are not able to pay these monthly charges. They are ready to bring much needed information to their communities. Information that will assist Montana citizens in being economically and educationally competitive in the country.

This bill will assist these libraries and libraries and schools throughout the state in bringing information to their communities. Information that is needed now. The costs of the phone charges and backhaul charges are prohibitive to many libraries and hurt everyone.

There is a great belief that the Federal program will include Universal Access for libraries and schools. However, this program could be two years away. Montana citizens need information now, not in two years. Most likely the Federal program will give relief to libraries with interstate costs. The problem in Montana is the intrastate charges. In many small communities

EXHIBIT 13
DATE 3/27/97

Mr. Chairman and members of the Committee, for the record my name is Mary Doggett and I am a member of the Montana State Library Commission. SB 89

a rural resident who lives 20 miles from a small town

I urge you to support an amendment to SB89 that would establish a Universal Access Program in Montana.

[redacted] for telecommunication access

schools cannot wait fo[redacted]s.

It is essential that every child and adult with no computer at home have access to the Information Superhighway at some place in their community.

Currently, such access is too expensive for many of Montana's libraries. For example, the Fort Benton Library would incur telecommunications charges of $350 a month for only phone costs if they wished to be connected to the Internet.

The State Library is planning to help Montana's libraries connect to the wealth of information that is available electronically. However, even if we give libraries the right computer equipment and training, some libraries cannot afford the onerous backhaul or monthly telecommunications charges.

We are seeing the results of these high charges. Some of our citizens in larger towns have complete access to information while some of our citizens who live in more remote areas do not.

I believe that all Montana citizens need equal access to information. By the year 2000 more than 60% of new jobs will require computing and information networking skills. Our Montana citizens, wherever they live, need help to develop these critical job skills.

I know that the current bill has provisions for discounted rates for schools and libraries through a Federal Program. However, this program, which they are currently debating in the Congress, is not a reality and frankly, some say that they will never ~~start~~ pass it.

Even if they start the Federal Program, it may not pay for the most expensive costs of telecommunication for Montana libraries -- the Intrastate Connection Charges. The federal program may only pay for the

Interstate ch.

The language of the original SB89 also had two important safeguards. First, the state program would not kick in and/or would cease if federal funds became available. Second, the original SB89 contains an absolute sunset, which would require that the 1999 legislature have to pass legislation to continue the program.

Therefore, the Blue Ribbon Task Force protected Montana citizens from funding the program through both dollars at the state and federal level. The sunset provision also protects citizens.

I urge you to support an amendment to SB 89 that would restore the original Universal Access Program to the bill. The Blue Ribbon Task Force unanimously approved this Program.

EXHIBIT 14
DATE 3/27/97
SB 89

Amendment to SB 89

Page 19, Line 19, after the words "TELECOMMUNICATIONS CARRIERS"

INSERT: ",EXCEPT WHERE PREEMPTED BY FEDERAL LAW,"

Section 14(1) of the bill would thus read:

(1) The fiscal agent shall collect contributions from all telecommunications carriers, except where preeempted by federal law, on a quarterly basis, based on . . . [section continues as in second reading copy].

15
DATE 3/27/97
SB 89

TESTIMONY ON MONTANA SENATE BILL 89
House Business and Labor Committee
Linda A. Adams, AT&T
March 27, 1997

Mr. Chairman, Members of the House Business and Labor Committee:

My name is Linda Adams, I am the AT&T Government Affairs Director for the states of Montana, Idaho, and Wyoming. I appreciate the opportunity to appear before you today as a "Proponent with amendments" to express our concerns on Senate Bill 89. AT&T participated on the Blue Ribbon Task Force and appreciates the considerable effort that has produced SB 89 in its current form. We support the general thrust of the bill in providing for the implementation of the Federal Telecommunications Act of 1996. We do have some concerns about what we view as anticompetitive provisions beginning on page 20. These will be addressed by others this morning. What I hope to do is to share with you our perspective on the role and benefits of real competition in the telecommunications industry and address some of the concerns I have heard from some of you and your colleagues about local competition.

While some might say that years will elapse before genuine competition arrives in Montana and hence the concerns of would-be competitors needn't be addressed in this legislation, I will say for the record that AT&T looks forward to entering the local market in Montana. That is why this legislation and the amendments we will offer today are important to us. That is why we entered into negotiations with USWest for an interconnection agreement at an early date, and that is why we care that the Public Service Commission's 150 page Arbitration Decision and Order issued last Thursday not be retroactively affected by this legislation.

I have also heard it said that AT&T doesn't understand the needs of the local telephone company to protect its considerable investment. To that point, I would simply remind that until 1/1/84 AT&T was THE phone company serving what is now USWest territory in Montana. We built and maintained the infrastructure that was in place until the day AT&T was broken up and Mountain Bell was separated off to join with several other Bell Operating Companies to become USWest.

We quickly learned that the only way to protect our investment was to focus on our customers and win their approval every day or lose them to one of a growing number of relentless competitors. --And let me say that AT&T fought just as hard to protect and preserve its monopoly prior to divestiture as USWest and others are today. And we argued endlessly for full recovery of historic or embedded costs, just as USWest is doing today. But once our monopoly was broken up and we had to get out and compete for customers or lose them, we had to stop whining and get real. When Sprint dropped the pin on television advertising their 100% digital network, AT&T had no choice but to write off billions of dollars of undepreciated copper plant and convert our facilities to digital quality more than a decade ahead of schedule. Regulators couldn't have forced us to do that! Real competition forced us to do it--and consumers reaped the benefits.

Similar outcomes occurred with respect to prices. One can haggle endlessly with regulators on costs and rates and prices, but when a competitor goes public with an offer that is better than yours, all the arguments of well paid lawyers and economists are irrelevant. Delight your customers or kiss them good-bye. AT&T has reduced its prices by more than 60% since divestiture. Even so, our market share has dropped from about 99% to about 60% as competitive choices have met individual customer's needs and won them over. More than 500 companies now compete for long distance customers nationwide. And, once again, it is the consumers who win when they a choice of providers.

The Congress last year made sweeping changes in the Communications Act of 1934--the first major changes in over 60 years! It had become apparent that competition was possible in local telephone service because of advances in existing technology and new commercially viable telecommunications technologies, such as wireless, satellite, and microwave. Still it took Congress years to arrive at a fair balance among the interests of consumers and the various industry players. The most difficult and challenging part--before them and before you--is managing the transition from monopoly to competition: how to give new entrants a fair opportunity to compete and win over customers one by one, while still being fair to the incumbents and their investors.

The long distance experience served as a model for the Congress. It was clear that potential new entrants wouldn't build a duplicate infrastructure before they had their first customer. Resale of spare capacity on AT&T's network was the means by which our competitors were able to get a toehold market by market. Where they were successful, some of them began building

their own facilities. By now there are four nationwide fiber networks, and the 496 or so resellers can negotiate for the best wholesale prices among AT&T, MCI, Sprint and LDDS Worldcom. That's just what we expect to happen in the local market. Little by little, competitive facilities will be built and service quality will improve at the same time as prices go down. Consumers and all telecommunications users will win. That is why fair, reasonable, cost-based prices for resale as provided for in the Federal Act are so important to get competition started.

That's why we said in our ad today "If we're given a fair chance, AT&T looks forward to entering the local phone market in Montana. We want to provide local phone service to as many customers as possible, whether they be urban or rural, business or residential. Claims that the long distance companies like AT&T only want to serve big business customers in urban areas simply are not true."

Under the Federal Telecommunications Act of 1996, prospective competitors negotiate with incumbents local exchange carriers interconnection agreements for wholesale prices and access to network facilities. When parties fail to reach agreement within a specified timeframe, State commissions are authorized to mediate and then arbitrate, if necessary, so that the incumbents cannot delay competition forever. The State commissions across the country, just as the Montana Public Service Commission, have been meeting this requirement. If the state fails to act, the prospective competitor can appeal to the FCC to step in and arbitrate an agreement so that competition can proceed. The Montana PSC announced the AT&T-USWest arbitration results last Thursday after an expensive and intensive proceeding. We would like to see a provision in SB89 that protects that Arbitration Decision and Order from retroactive changes.

In addition, we would like to see provisions in the pricing sections of SB 89 that Montana law is not intended to be inconsistent with federal law. Mr. Akey will present the specific amendments to which I have referred. Without such provisions, expensive litigation could needlessly consume both taxpayer and corporate resources and delay the benefits of true competition in Montana.

I thank you for your consideration and would stand for questions at the appropriate time.

EXHIBIT 16
DATE 3/27/97
SB 89

AMENDMENTS TO SENATE BILL 89
Third Reading Copy
Universal Service Fund Amendments
Offered by AT & T

1. Page 20, lines 12 and 13.
Following: "BE"
Strike: "DIRECTLY"
Following: "TO"
Insert: "MONTANA"
Following: "END-USER"
Strike: "CUSTOMERS BY A REDUCTION IN CORRESPONDING"

2. Page 21, lines 22 and 23.
Following: "ALLOCATION OF LOOP COSTS"
Strike: "CHARGED TO LONG DISTANCE COMPANIES"

3. Page 22, line 11.
Following: "OF LOOP COSTS"
Strike: "CHARGED TO LONG DISTANCE COMPANIES"

4. Page 23, line 1.
Following: "SERVICES"
Insert: "OR FACILITIES"

5. Page 23, line 2.
Following "CARRIER"
Strike: "INCLUDE"
Insert: "HAVE BEEN REDUCED BY"
Following: "CONTRIBUTION"
Strike: "FOR"
Insert: "FROM"

6. Page 29, line 24.
Following: "MONTANA,"
Insert: "AND BILLED FOR A SERVICE ADDRESS IN MONTANA,"

EXHIBIT 17
DATE 3/27/97
SB 89

AMENDMENTS TO SENATE BILL 89
Third Reading Copy
Pricing Amendments
Offered by AT&T

1. Page 23, line 15.
Following: "A"
Strike: "STANDARDIZED OR"
Following: "DEFAULT"
Insert: "PROXY"

2. Page 23, line 16.
Following: "PRICE."
Insert: "THE COMMISSION SHALL ESTABLISH WHOLESALE PRICES USING COMPANY SPECIFIC COSTS."

3. Page 23, line 21.
Following: "COST"
Insert: ", NOT INCONSISTENT WITH THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, PUBLIC LAW 104-104, AT 47 U.S.C. 252(D)(1),"

4. Page 23, lines 24 and 25.
Following: "COSTS"
Strike: the remainder of lines 24 and 25.

5. Page 23, line 27.
Following: "CARRIERS"
Insert: " OFFERING SIMILAR SERVICES"

6. Page 23, line 29.
Following: "(C)"
Insert: "A REASONABLE SHARE OF THE COSTS ASSOCIATED WITH"
Following: "FACTORS"
Delete: "THAT RECOGNIZE THE"
Insert: "RECOGNIZING"

7. Page 24, line 2.
Following: "(2)"
Insert: "EXCEPT AS OTHERWISE REQUIRED BY FEDERAL LAW: (a)"

8. Page 24, line 5.
Following: "CARRIERS"
Strike: "."
Insert: "; AND (b)"

9. Page 24, line 8.
Insert: "NEW SECTION. **SECTION 19. APPLICABILITY OF PRICING PROVISIONS.** NOTHING CONTAINED IN SECTIONS 17 OR 18 OF THIS ACT SHALL IN ANY MANNER ALTER, AMEND, OR OTHERWISE AFFECT THE PRICES, TERMS, AND CONDITIONS OF ANY FINAL OR INTERIM ARBITRATED INTERCONNECTION AGREEMENT, ARBITRATION DECISION, ANY APPEALS FROM SUCH AGREEMENT OR DECISION, OR ANY PERMANENT RATES SUBSEQUENTLY ADOPTED AND AMENDING SUCH ARBITRATION AGREEMENT, WHERE THE REQUEST FOR ARBITRATION WAS FILED ON OR BEFORE MARCH 1, 1997."
Renumber: Subsequent sections.

10. Page 24, lines 9 through 13.
Strike: Section 19 in its entirety
Renumber: Subsequent sections

EXHIBIT 18
DATE 3/27/97
SB 84

FEDERAL TELECOMMUNICATIONS ACT OF 1996
Public Law 104-104
Section 252 (d)(1)

`(d) PRICING STANDARDS-

`(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES- Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--

`(A) shall be--

`(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

`(ii) nondiscriminatory, and

`(B) may include a reasonable profit.

`(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC-

`(A) IN GENERAL- For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

`(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

`(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

`(B) RULES OF CONSTRUCTION- This paragraph shall not be construed--

`(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

`(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

`(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES- For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

House Business and Labor Committee
House of Representatives
March 27, 1997

EXHIBIT 19
DATE 3/27/97
SB 89

Senate Bill 89
BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE

Testimony of Commissioner Danny Oberg
on behalf of the Montana Public Service Commission

Mr. Chairman, Members of the Committee and Senator Beck,

I am Danny Oberg, Commissioner from District 1 of the Montana PSC, appearing here today as a ***conditional proponent*** of the bill. That is, we believe portions of this bill are absolutely necessary for passage, but in its present form it is unacceptable without certain amendments. I served as an Ex-Officio member of the Blue Ribbon Telecommunications Task Force which requested that this bill be drafted. The Commission was a true proponent of this bill when it first was introduced, but it now bares little resemblance today the bill that was originally introduced.

This bill has been hailed as "The Grand Compromise" in which the interests of the public, incumbent carriers and new entrants have been satisfactorily considered and balanced. The Commission would like to express its appreciation to Senator Beck and the Senate for **not** adopting US West's three proposed amendments to the original 89 which would have literally reversed the BRTF on critical matters. And while we are grateful our alarm at US West's amendments was responded to, we believe this bill is still not a true compromise. And even though everybody here got something in this new bill, I do **not** believe it is acceptable in its present form for the interests of the consuming public.

The silent, but important Party that wasn't at the negotiating table which created this "Grand Compromise" was the consuming public. Lost from the original SB 89 were critical consumer programs and protection measures. In addition, the clear intent of SB 89 was to create a playing field that was evenhanded and fair to implement TA 96. By adopting the protectionist language now in the bill and requested by the incumbents for wholesale pricing you may be discouraging new entrants or unfairly deciding the outcome of current arbitration cases.

It is up to this Committee and the House to respond to the consuming public and restore the balance that was originally reflected in SB 89 and which has been lost in this version. The Commission appears here today to ask the House to restore critical elements of the original Task Force bill and delete certain self serving amendments which came from various industry segments which may impede competition or raise rates for your constituents.

The Commission recommends that the following amendments be made to SB 89 to restore at least a portion of the consumer oriented decisions in SB 89 as introduced:

1. Restore the Interim Universal Access Section (Restore Section 16, 17, 18, 19, 20, 21, 22, and 23)

2. Restore the language on reseller regulation (Which is done by striking the exemption RESALE OF TELECOMMUNICATION SERVICES In Section 22 (6) (b))

3. Adopt the amendments of AT & T on Universal Service Fund as more in harmony with the balance of the original bill.

4. Adopt the amendments of AT & T concerning Wholesale Pricing and Subsidies to avoid unnecessary preemption litigation and allow resolution of current court cases.

5. Delete US West's Yellow Page Imputation Prohibition (Delete Section 19 in its entirety and restore Section 24 (2) --which is present Montana law)

This bill has been characterized as absolutely necessary to implement the federal Telecommunications Act of 1996 and necessary to preserve the flow of 17 million dollars of revenue for the support of telephone service in Montana. The Commission agrees, in fact , that the Legislature must authorize the PSC to conduct arbitrations, approve interconnection agreements and designate eligible carriers for currently unregulated companies like cooperatives. **That is all that has to be done--the remainder of the bill is optional. We believe this can be done simply. If the Committee is *not* inclined to bring balance to this bill by adopting the above amendments we urge you to reject the wish list of both the incumbents and the new entrants and pass a very minimalist version of SB 89 which could be done in a page or two of law.**

Basic phone exchange rates are under intense pressure and your constituents are likely to see significant local rate increases soon. The Commission has attached a graphic page in this testimony that shows US West residential rates may approach $30.00 monthly by years end. You have probably been told that a vote for this bill will not raise your constituents phone bill. **If you believe this, then you must believe the PSC can ignore the laws the Legislature passes. I can assure you that is not the case. A vote for this bill will surely raise US West residential rates by at least $ 1.40 a month and probably more. If you believe the Legislature should not be mandating rate increases, you should delete the Yellow Page and depreciation language. The companies would then have to prove those adjustments in a rate case, where all expenses and revenues could be examined, before rates would be**

increased.

Let me take a minute to develop these five areas where the Commission has concerns:

1. Interim Universal Access Sections

The Commission fully supports the testimony of the Libraries and BRTF members that the original language should be restored. At this point it is speculative in nature what type of program will be approved by the FCC in May. This Montana developed measure has some unique provisions that probably will not be duplicated in the federal program-- including funding for tribal colleges and insuring every community has access to the Information Highway.

2. Restore Reseller Regulation

Under current Montana law resellers are exempt from regulation. This exemption has caused the Commission considerable problems in helping consumers who have been defrauded or charged excessively by "fly by night operations" and "get rich quick schemes". The slamming bill only partially corrects this problem.

The BRTF recognized that resale will be a growing field as TA96 makes it an attractive option for many to get into local service. We anticipate many potential problems and believe the Commission needs authority for complaint resolution. A customer of a local reseller may be stuck with no remedy when neither his reseller nor the incumbent LEC resolves complaints or service problems. For example, customers of local resellers with service problems (say, delay in installation or repair problem) expect their reseller to address the situation promptly. What if the reseller doesn't? Or what if the reseller says US West is to blame for not getting the service remedied? Reseller customers might very well call the PSC for assistance in resolving complaints. As it is now, and under SB 89, the PSC response would have to be: "We are sorry, we don't regulate the phone company you have subscribed to. It is a reseller and Montana law exempts resellers from regulation. You must work this problem out with your reseller." The customer may then say he has been told by his reseller it was a US West problem. Is the PSC then supposed to call US West to get the complaint resolved, as if this was a complaint from a US West customer? That's not fair to US West, and it would result in the PSC working on behalf of the unregulated reseller to deal with US West.

Resellers of local service would not be bound by any of the PSC's deposit, termination, billing or service rules under SB 89. Customers may have expectations that all phone companies must give notice before disconnecting service, or must send bills monthly, or pay interests on deposits, or install or repair service promptly, or offer toll free billing inquiry numbers, etc. If, and when, resellers of local service step too far outside the expectations customers have of phone service, the PSC is bound to hear about it from consumers-- and we will be able to offer absolutely no

assistance. Neither will anyone else. The FCC will certainly send all intrastate reseller complaints it receives from Montanans to the Montana PSC. No other state agency has any more jurisdiction over resellers than the PSC so thee is little possibility for customer relief from abuse.

The Commission has continually advocated it needs the ability to certify local resellers and to be able to jerk their certification if they are providing poor service. We note it is an integral part of the electric restructuring bill. Under SB 89 we can only register companies. As a minimum we need to remove the reseller exemption in present law so we can attempt to resolve consumer complaints about local and intraLATA toll resellers. However, if those resellers don't have to comply with any PSC standards for billing, credit, service quality , etc then our ability to resolve complaints is minimal. **We urge you to revoke the reseller regulation exemption so we can write appropriate consumer protection rules for the reseller industry.**

3. Universal Service Fund Amendments

The Commission supports the amendments offered by AT & T on the USF portion of the bill. We believe it adds to the bill and is consistent with the Senate intent to give the PSC discretion in implementing such a program.

4. Wholesale Pricing and Subsidies

The "Grand Compromise" which this new version of SB 89 represents adopts the wish list of US West and other incumbents offered in a separate telecommunications bill in the Senate. The Commission opposed that bill as being anti-competitive in nature and because we believe it tilts the playing field too heavily in favor of one side and may discourage the development of new providers in this state. We further believe that the passage of the bill as written may unfavorably impact current arbitrations in process.

The language in the bill places in law issues which are properly the subject of interconnection negotiations and arbitrations. The language adopts one sides preferred outcome of an arbitration and that is just not fair.

We believe it is premature for the Legislature to act while these issues are before the Commission in current arbitrations. Further, some of this language is yet to be settled in national litigation in the 8th Circuit Court of Appeals. When that litigation is complete, it is highly likely that the wholesale pricing portions of SB 89 may be preempted.

The Commission encourages the House to accept the amendments of AT&T on the issues of wholesale pricing.

5. Yellow Page Imputation Prohibition Discussion

The Commission's strongest objections to Senate Bill 89(as amended by the Senate) are to these sections. The intent of these section is to reverse regulatory treatment of yellow page revenues. Through legislation US West is attempting to reverse a long standing rate making adjustment that has been used in most states across the country and upheld by the Courts. US West is currently litigating this issue in the 8th, 9th, and 10th Circuit Courts of Appeal. It has also introduced legislation in a number of states.. Apparently the company believes if it throws enough balls in the air one will land favorably for them.

This is not just an academic issue as it will have real impacts on ratepayers. The Commission has calculated that it would cost residential ratepayers as much as $1.40 a month (16.80 per year) if these provisions become law. This is just one of numerous issues putting upward pressures on rates. There is an attachment that illustrates factors affecting present local rates. At a time when residential rates are likely to rise dramatically it is important to insure fairness does prevail. Beyond the dollar impacts on ratepayers, the Commission believes the principle involved is just as important. To not insure a revenue stream from Yellow Page profits to the regulated services of a phone company is akin to robbing the assets of the regulated company and its customers.

Background

Yellow Pages are listings and advertising by primarily commercial telephone subscribers to other telephone subscribers. Prior to the break up of AT&T the revenues produced by the Yellow Pages was considered as part of the regulated telephone companies revenues for purposes of calculating telephone rates.

In 1982 the federal courts approved a settlement (known as the modified final judgment) of an antitrust action brought against AT&T which resulted in the divestiture of the Bell operating companies and the splitting of assets between AT&T and the Regional Bell Operating Companies (RBOCS.)

Because the Yellow Pages were so profitable it was an asset sought by both the parent and its new offspring. In the MFJ the court ordered that the Bell Operating Companies should keep the publication of the Yellow Pages. The court found that it would not be in the public interest to restrict the operating companies from publishing Yellow Pages. The reason the court made this decision was to continue the Yellow Page revenues contribution to support local telephone service.

In the months after divestiture many of the RBOCs began to spin off the publication of the Yellow Pages into unregulated subsidies as an effort to capture the enormous profits that this former regulatory asset produced. Judge Green, who had continuing oversight of the MFJ, commented on this strategy several times. He stated that this was contrary to the divestiture

plan, which placed Yellow Pages with the local companies so the revenues could be continued to be used to offset the revenues needed for local service. Judge Green said:

> When the Court required AT &T to turn over its Yellow Pages operations to the Operating Companies, ...it assumed that the revenues from directory advertising would continue to be included in the rate base of the Operating Companies, providing a subsidy to local rates.....Yet the Regional Holding Companies, or some of them, have breached that understanding. Instead of funneling Yellow Page Revenues to the Operating Companies they have created separate subsidiaries to hand their directory publishing operations which do not feed the revenues from those operations to the rate base.

In a later opinion Judge Green specifically criticized the spin off of Yellow Pages by NYNEX.

> ....the revenues from Yellow Pages have always far exceeded the costs of publication. In short the NYNEX arrangement does not assist the ratepayers; it only assists NYNEX.

The Montana Public Service Commission has been as troubled as Judge Green by this telephone company strategy. The Yellow Pages is an asset whose value wholly depends on the provision of telephone service. The super high profits from this asset are properly used as revenue to offset the expenses of providing telephone service.

US West's unilateral spin off this asset does not change the situation. The Yellow Pages produce revenue and have value only because the company provides local service and has ownership of the White Page listings. Advertisers pay to advertise to connect with the white page listings. In business terms, there are cobinding rights which make Yellow Pages profitable.

Montana ratepayers deserve to be compensated for this regulatory asset in whatever corporate structure US West chooses to operate. As such the Commission ruled in 1988 that a revenue stream must be assured to ratepayers through the imputation of revenues consistent with revenues at the time of divestiture.

Now US West is asking you to reverse that policy. The Commission would suggest to you that it is bad public policy and US West should not be allowed to restructure away revenues and assets that have value to ratepayers. I would offer the following reasons:

1. US West did not develop Yellow Pages in a competitive environment. It was inherited in the divestiture for the specific purpose of maintaining affordable local service.

2. US WEST DIRECT obtained this valuable asset in a non-arms-length transaction from its parent telephone company.

3. US WEST DIRECT continues to draw intangible benefits from US West Communications by its access to its subscribers, its use of its name. Logos, reputation and affiliate relationship.

We believe the Montana Legislature should reject US West's efforts to strike down the Montana PSC's regulatory authority which stands in the way of US West seizing all of the enormous Yellow Page super profits which are created as a result of its basic telephone operations in Montana. US West has failed to convince state regulators or courts of the merits of their arguments and is now turning to state Legislatures and the federal courts.

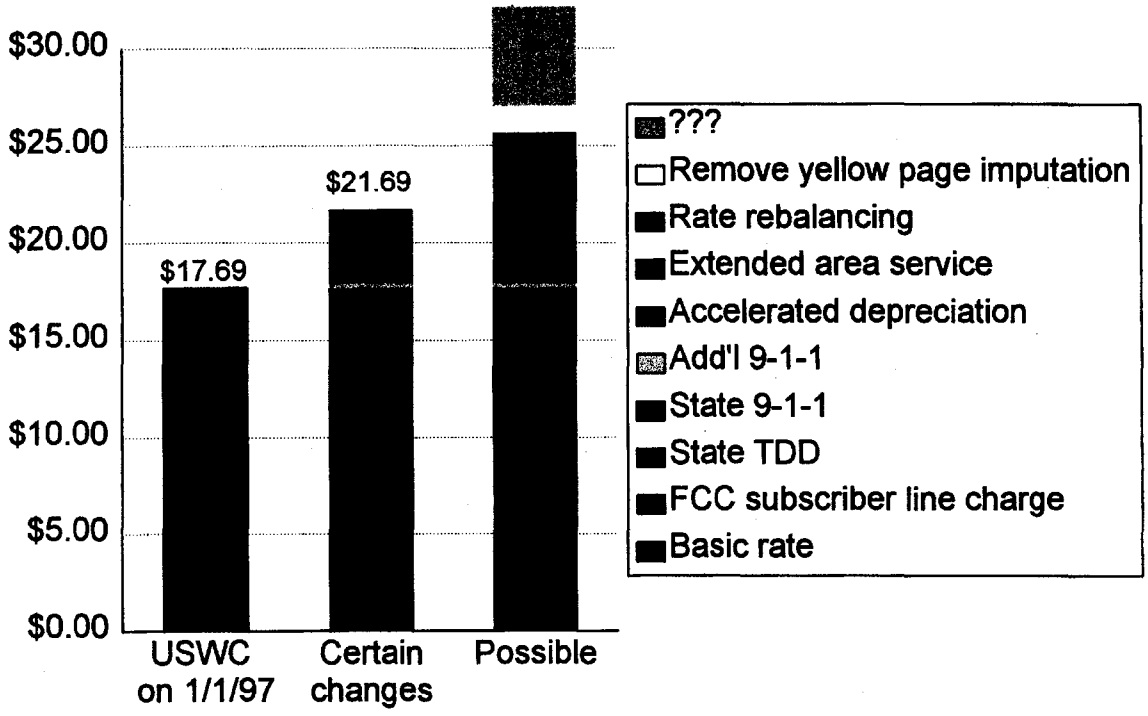
We would ask the House to not keep the PSC from being able to protect Montana ratepayers against unjustly high rates that would be caused by the uncompensated use of the regulated companies name, reputation, logos and affiliation with US West Communications. We have estimated that if this bill is passed it will cause every one of your constituents $1.40 an extra more a month.

At the very least US West should be required to seek this increase in a rate case before the Commission which could look at the arguments of the company in view of the passage of the Telecommunications Act of 1996. The MPSC has not been given an opportunity to do so.

Conclusion

The PSC asks this Committee to in reality create a "Grand Compromise" by more properly including consumer interests into SB 89. By addressing the five areas of concern identified by the Commission in this testimony you will have indeed restored the integrity of SB 89 as offered to you by the Blue Ribbon Telecommunications Task Force and still have addressed the needs of the industry in a fair and even handed way.

POTENTIAL RATE IMPACTS OF VARIOUS UPWARD PRESSURES ON US WEST'S MONTHLY RESIDENTIAL PHONE RATE



MONTHLY RESIDENTIAL RATE on 1/1/97:	
Basic local service charge:	$13.84
FCC subscriber line charge:	3.50
TDD:	.10
9-1-1:	.25
	$17.69

CERTAIN CHANGES:	
Due to extended area service [1]	$2.55
Due to increased 9-1-1 fee [2]	.30
Due to accelerated depreciation [3]	$1.15
	+$4.00

POSSIBLE INCREASES (matters pending before PSC and Legislature):	
Due to USWC's rate rebalancing [4]	$4.00
Removing yellow page imputation [5]	1.40
	+$5.40

(1) The PSC recently approved 8 expanded local calling regions in US West's service territory. EAS will increase local service rates of the majority of USWC's customers by $2.55/month beginning sometime this spring.

(2) HB 210 (passed into law) increased the 9-1-1 fee by 30 cents.

(3) Based on the stipulation between USWC and MCC in Docket D96.8.131 that the PSC approved 1/30/97.

(4) USWC proposes to increase residential rates by $4/month in Docket D96.12.220. The PSC has not decided the case yet so the end result is not known.

(5) Approximate monthly impact on residential rates if USWC discontinues crediting a portion of its directory publishing revenues to its regulated services (pursuant to SB 89). Without that imputation, the PSC will have little choice but to make up the lost revenue in higher rates.

POSSIBLE FUTURE MONTHLY RESIDENTIAL RATE $27.09

In addition, substantial basic rate increases may result from FCC universal service proceedings and access charge reform, and possibly from a state universal service/access fund. Also, in the just completed USWC/AT&T arbitration, USWC claimed it has a depreciation reserve deficiency of $45.6 million that USWC believes should be partially recovered in local rates.

EXHIBIT 20
DATE 3/27/97
SB 89

Testimony before Montana House of Representatives- Business & Labor Committee
In Opposition to:
Senate Bill 89 - Sen. Beck - AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL TELECOMMUNICATIONS ACT OF 1996;

Jay Wilson Preston
President
Ronan Telephone Company
312 Main St. SW
Ronan, MT 59864

Mr. Chairman, and members of the Committee, my name is Jay Preston. I am President of Ronan Telephone Company. We are a family owned local telephone company. We serve 3,000 rural households and businesses in and around the small towns of Ronan and Pablo in Northwestern Montana. I rise in opposition to SB 89 in it's current form.

My principal objection to this bill is the language authorizing a state Universal Service Fund.

This bill authorizes a tax on all Montanans that may be imposed or may not be imposed depending on a determination of need by the Public Service Commission. The amount of the tax, if it is imposed, is unknown. Who will pay and who will benefit is unknown. Which consumers will benefit and which consumers will contribute is unknown. Which communities will be net payers or net beneficiaries is unknown. And, finally, the universal service tax and distribution system, if set up, ends before the next session of the legislature begins.

In addition, the Public Service Commission is required to design the tax and distribution system, but has no jurisdiction to monitor or enforce the proper use of the funds distributed to telephone co-ops. The rural co-ops will, in all likelihood, be the largest net receivers of funds. If the legislature is giving the Public Service Commission the authority to design this tax, as this act currently proposes, it makes no sense to withhold the power from the Commission to monitor and enforce the proper use of the portion of funds distributed to cooperatives.

Attached to this testimony are proposed amendments for your consideration that may correct this defect in the universal service fund portion of this bill. These amendments will give the Public Service Commission the authority to regulate the use of the funds distributed to cooperative telephone firms in a manner similar to the way commercial telephone firms are regulated today. In an environment where regulated competition seems inevitable, and where competition is likely to develop between lightly taxed unregulated cooperative firms and fully taxed, heavily regulated commercial firms (or between commercial firms owned and controlled by cooperatives and private commercial firms), it makes no sense to continue to tie the hands of the Public Service Commission by continuing to deny them the ability to regulate the use of tax revenues distributed to unregulated cooperatives. This is particularly true when that money is collected primarily from commercial carriers and their customers.

The thought that taxes collected from commercial carrier A might flow to cooperative carrier B who may decide to compete with commercial carrier A is outrageously anti-competitive. Such a system will violate the competitive neutrality requirement of the federal act and cannot help Montana find its way to a full and fair competitive telecommunications marketplace.

I also want to point out how difficult this law is going to be to interpret and enforce. I will read one small section from this bill that I personally find practically impossible to understand. Under Section 15. Distributions from fund -- calculation of COSTS, Paragraph (8) reads as follows:

AN ELIGIBLE TELECOMMUNICATIONS CARRIER PROVIDING TELECOMMUNICATIONS SERVICES THROUGH RESALE OF ANOTHER TELECOMMUNICATIONS SERVICES OR FACILITIES MAY NOT RECEIVE SUPPORT FOR THOSE TELECOMMUNICATIONS SERVICES IF THE RATES CHARGED TO AN ELIGIBLE TELECOMMUNICATIONS CARRIER BY THE OTHER TELECOMMUNICATIONS CARRIER INCLUDE A CONTRIBUTION FOR UNIVERSAL SERVICE FUNDS UNDER THIS SECTION.

How am I supposed to comply with a law that I cannot understand? I believe incomprehensible law is always bad policy and should be rejected.

Contrary to what you may have heard, the telecom world will not come to an end in the next two years if this bill is rejected. Just last week, Reed Hundt, the chairman of the FCC, told Senator Burns and the Telecommunications Subcommittee that very little will change for rural phone companies over the next two years. He also told Senator Burns that state legislatures do not need to do anything to insure universal service for the next two years.

Whether you act now or not, competition in telecommunications will continue to evolve. Even if this evolution is chaotic, the phones will still be ringing two years from now just as they are today. The needs of our industry might be more clear by then and the benefits and costs of universal service fund proposals will be able to be predicted with some degree of accuracy. I think this universal service fund proposal is premature and should be tabled for now.

Thank you.

PROPOSED AMENDMENTS TO SENATE BILL NO. 89
SUBMITTED TO MONTANA HOUSE BUSINESS & LABOR COMMITTEE
BY RONAN TELEPHONE COMPANY
MARCH 27, 1997

I. STATEMENT OF INTENT

Add:

"Sections 14 and 15 contain rulemaking authority for the commission to implement and enforce the provisions of those sections."

II. SECTION 1

Delete, as follows (interlined):

~~[Sections 1 through 19] do not grant any jurisdiction to the commission over telecommunications carriers except as expressly set forth in [sections 1 through 19], and [sections 1 through 19] may not be construed to limit or repeal exemptions from the commission's jurisdiction otherwise recognized by statute or law.~~ Legislation may not be considered to supersede or modify any provision of [sections 1 through 19] except to the extent that the legislation does so expressly.

And Add:

"Notwithstanding the provisions of §35-18-102, MCA, the commission shall have the authority to implement, audit, obtain information, and enforce the provisions of [Sections 1 through 19], through rules and commission orders, which are binding on all carriers."

III. Section 14(2): (Contributions to Fund)

Add:

"Notwithstanding §35-18-102, MCA, the commission may adopt rules and perform all necessary and appropriate actions to implement, audit, verify and enforce the contributions required from all carriers by this section. The commission may designate an agent to perform audit, verification, and enforcement functions."

IV. SECTION 15: (Distributions from Fund-Calculation of Costs)

Add new subsections (10) and (11):

(10) "The commission may adopt rules and perform all necessary and appropriate actions to implement, audit, verify and enforce the provisions of this section. The commission may restrict, reduce or withhold distributions, if it is determined that distributions from the fund are being used for purposes other than to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas, or if distributions are not being invested by the carrier to provide access to the services described in Section 12, to end users (or other appropriate services which may be defined in commission rules). The commission may also adopt rules and perform all necessary and appropriate actions to implement, audit, verify and enforce the proper calculation of costs and amounts which eligible carriers are entitled to receive from the fund.

(11) The provisions of sections 14 and 15, and the commission authority and rules thereunder are enforceable against all carriers participating in the fund, notwithstanding the provisions of §§ 35-18-102, 69-3-101(f) and 69-3-803(3), MCA, or any other inconsistent provisions of law.

DATE 3/27/97
SB 89

The House Business and Labor Committee

Testimony relative to Senate Bill 89, offered March 26,1997

Mr Chairman, Committe Members and fellow riders in the Big Drive of 89,

My name is Robert Ekblad and I am vice-president of Hot Springs Telephone Company, a small independent rural telephone company in Sanders county. I come to you today, not just as a representative of the telephone industry, but as a concerned citizen of rural America.

I am concerned that SB89 does not further, or even address the universal service mandate of the Federal Communications Act of 1996, that rural areas will have telecommunictions service that are comparable to urban services and on approximately the same schedule.

I am concerned that SB 89 affirms to the world that voice grade telephone is adequate for rural Montana, while other states and urban areas will have advanced services providing high speed digital voice, graphics and data into every home.

I am concernded that the sponsors of this bill have so little confidence in their work that they mandated the bill will terminate 21 months from now.

I am concerned that SB 89 reflects the attitude that "We don't have time to do it right, but we have time to do it over in 21 months".

I am concerned that money needed for education and corrections will be spent by Montana Government to implement an act of limited usefulness and limited life.

I am concerned that SB 89 continues to suppport the lack of level playing field between independent rural telephone companies and cooperative telephone companies in property tax and tariff/regulation policy.

I am concerned that this legislature will endorse a woefully inadeqate definition of universal service rather than advising the FCC that their proposed rules will not meet t
rural or urban Montana as manda

I urge you to reject SB 89 in i

I urge you to reject any
telecommunication provider to
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services to high cost rural are

Exhibit # 21
SB 29 20+ Pages of Testimony

The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

EX 22
3/27/97
SB 89

Senate Bill 89

Overview

- Implements key provisions of the Federal Telecommunications Act of 1996 needed to open Montana's local telephone marketplace to competition.

- Establishes a mechanism to ensure that Montanans benefit from this competitive marketplace while offering protection for "affordable" telephone service.

- Sets basic guidelines to ensure fair competition, especially when regulators continue to mandate telecommunications pricing.

Statement of Intent

- Allows the public service commission rulemaking authority relating to interconnection proceedings necessary to implement the Federal Telecommunications Act. (*Interconnection is when two telecommunication companies negotiate the rates and terms of connecting their telephone networks, purchasing wholesale services, etc.*)

- Allows the commission rulemaking authority to establish a Montana universal service fund if necessary, including: collection of contributions, assessment of late fees on contributions, establishment of affordability benchmarks and contracting with a third party administrator.

Interconnection, Section 1 - 9

- Gives commission the authority to arbitrate interconnection disputes between telecommunication companies. Provides the commission with limited authority over telecommunications companies that it currently has no jurisdiction over for purposes of these sections only.

- The Federal Telecommunications Act requires local telephone companies to allow competitors to use their network. Arrangements are negotiated between two companies. If agreement cannot be reached to use the network, these sections allow the commission to serve as arbitrator. Without this new law, these disputes would fall under the jurisdiction of the Federal Communications Commission and would be arbitrated in Washington, D.C.. It also allows the commission to approve agreements reached between the negotiating parties as required by the Federal Act.

- Montana's current statutes require that disputes between telecommunications companies be settled in a district court condemnation proceeding. That requirement is repealed.

Section 1 & 2 - Gives the commission limited authority to act in interconnection disputes involving all telecommunications companies. Many of these companies are not regulated by the commission and it has no jurisdiction over them (i.e., cellular, cooperatives, cable).

Section 3 - authority for commission to adopt "procedural" rules.

Section 4 - Specifies the duty of local telephone companies to allow competitors to use their network as outlined in the Federal Act.

Section 5 - Two companies can voluntarily negotiate an interconnection agreement and enter into a binding contract.

Section 6 - Allows a telecommunications company to request a mediator and gives the commission authority to appoint one if needed during negotiations.

Section 7 - Gives commission authority to arbitrate a dispute and outlines what authority they have during arbitration. They may only arbitrate unresolved issues; their decision cannot be outside the positions of the two companies; limits involvement to the two parties, the commission and Montana consumer counsel; and, hearings must be conducted under Montana Rules of Evidence and Rules of Civil Procedure.

Sections 8 & 9 - Gives commission authority to approve both arbitrated decisions and agreements reached voluntarily between telecommunications companies as required by the Federal Act.

Eligible Carrier Status - Section 10

- Provides commission authority, as required by the Federal Act, to designate those telecommunications companies that are eligible to receive federal universal service support.

- Currently, local Montana telephone companies [redacted] in federal universal service support to help keep rates in rural/high cost areas affordable. The Federal Act requires state commissions to designate who gets this support in the state. Without this authority, Montana local telephone companies cannot be designated as "eligible carriers" and cannot receive federal universal service funding.

Establishes a mechanism to create a Montana Universal Service Fund - Sections 11 - 15

- Gives the commission authority to establish a Montana universal service fund if one becomes necessary to ensure that telephone rates in Montana stay affordable. (*Section 31 sunsets these sections December 31, 1999. This will allow the next legislature to review these provisions after the Federal Communications Commission issues final rules.*)

Section 11 - Sets general parameters for a state universal service fund including that it will: complement (not duplicate) the federal universal service fund; be competitively neutral in both funding and distribution; provide adequate funding; and, allow benefits from the federal universal service fund to schools, libraries and health care providers.

Section 12 - Restricts the use of this fund to provide support for basic telephone services to Montanans.

Section 13 - Allows the commission to select a third-party administrator, through the competitive bidding process, to administer the daily operations of the universal service fund and serve as its fiscal agent.

Section 14 - Outlines how contributions from telecommunications companies will be collected and gives the commission authority to collect those funds into the universal service fund. Requires that any reduction in the fees that long-distance companies pay to use the local telephone network must be passed on to consumers.

Section 15 - Sets parameters that the commission must use in deciding how telecommunication companies get support from a state universal service fund and how they determine the level of support. Requires the commission to set the "affordability" level for local service and treat all telecommunication companies on an equitable basis.

Discounts for schools, libraries and health care providers - Section 16

- Authorizes the commission to perform administrative functions needed for Montana schools, libraries and health care providers to receive federal universal service funding. Without this authority, these entities may not be able to apply for or receive federal support. The recommendation currently before the Federal Communications Commission would fund discounts from telecommunications companies of up to $2.25 billion available to these entities throughout the United States.

Wholesale Pricing - Sections 17 & 18

• The Federal Act requires incumbent local telecommunication companies to sell their services to new competitors at discounted wholesale prices. These wholesale prices are determined during negotiations between two telecommunication companies. When two companies cannot reach agreement, the commission may determine these prices in an arbitration proceeding. These sections states the commission, when it is required to set those wholesale prices, must ensure that those prices cover their actual cost. The Federal Act allows a state commission to set wholesale prices that are just, reasonable, based on cost and include a reasonable profit. These sections give the commission authority to set wholesale rates and set cost standards based on actual Montana costs.

Section 17 - Prohibits the commission from using "default" prices set by the Federal Communications Commission. These federal prices are based on theoretical, national averages and are not based on what it costs to provide telephone service in Montana. Use of "default" prices would pre-determine the outcome of arbitration disputes over wholesale prices.

Section 18 - Specifies that the commission, when setting wholesale prices, must base them at a level sufficient to recover the actual Montana cost of providing those services. This section does not pre-determine what wholesale prices the commission will order, but only says that government cannot mandate prices below their actual cost. This section requires that actual cost for wholesale prices (*similar to retail pricing*) includes:

(a) a reasonable share of overhead (*determined by the commission);*

(b) competitive depreciation costs (*determined by the commission)* and allows for some recovery of depreciation expenses that result when the commission moves from long regulatory depreciation schedules to shorter competitive depreciation schedules (*the commission determines the rate at which they are recovered*);

(c) a recognition of the cost that a telecommunications company incurs when it is required by government to serve an area. Spare capacity is put in place to allow for growth (*i.e., the telephone cable that goes to a home is capable of providing three telephone lines so that if the customer want's a second or third line, they can get it without waiting for construction and having their yard dug up to place more lines*). To not allow a company to put in spare capacity means that telephone facility would only be deployed when specifically requested by a consumer. This would result in delays in getting service and increase the overall cost of telephone service; and,

(d) a reasonable profit (*determined by the commission*).

• **Subsection (2)** states that the commission must establish wholesale and retail pricing based on the same average pricing principles. An example of average pricing is that a consumer pays the same rate for residential service from a telecommunications company whether they live in the city or way out in the country even though the cost of providing that service is higher in a rural area than in an urban area. The commission may not require that wholesale prices vary depending on the cost of providing those services unless retail services are priced in the same manner. (*For example, the commission cannot order a $20 wholesale local telephone service price in an urban area and a $80 wholesale price in a rural area if retail services are not priced in a similar manner.*)

Prohibited Subsidies - Section 19 and Section 24

• Reinforces the competitive intent and direction of telecommunications policy in Montana and the Federal Act by stating that financial results of one subsidiary or affiliate of a company cannot be considered in determining the prices of telephone service.

• Specifically prohibits the commission from **pretending** that the profit from a separate publishing affiliate can be considered when setting the rates for regulated telecommunications companies. (*Today, this is only applied to one company, U S WEST Communications, although U S WEST's yellow pages are printed by a separate "arms length" affiliate. There are at least 35 different telephone directories in Montana published by at least seven different publishing companies. No other company with a publishing affiliate is treated in this manner by the commission.)*

• **Section 24** removes language from current statute which allows the commission to consider profits from a separate publishing affiliate.

Exclude interconnection arbitration from the Montana Administrative Procedures Act - Section 20

• Excludes interconnection arbitrations conducted by the commission from the provisions of the Montana Administrative Procedures Act (MAPA).

• This ensures that an interconnection arbitration is conducted like a traditional arbitration and that the commission does not have authority to go beyond the items of dispute or make a decision that goes beyond the positions of the two telecommunication companies in the arbitration.

• Many of the companies that will potentially be before the commission in arbitration disputes are not regulated. This ensures that the commission cannot use MAPA as a basis for extending regulation or to set prices for services beyond the disputed items which is the intent of the Federal Act.

Promotions - Section 21

- Streamlines the ability for regulated telecommunications companies to offer promotional pricing to Montana consumers. For services other than basic telephone service, the regulated company must simply inform the commission. For basic telephone services, the commission must approve the promotional pricing.

Definitions - Section 22

- Updates current definitions found in statute to comply with new definitions in the Federal Act and to recognize new definitions included in this legislation.

Registration of telecommunication companies - Section 23

- Requires that all telecommunication companies that want to do business in Montana must **register** with the commission. It also establishes the information that the commission may require from those companies. Gives the commission authority to waive most of the information requirements where appropriate.

Prohibition against cross-subsidization - Section 24

- (Refer to Section 19) This removes language which allows the commission to consider profits from a separate publishing affiliate.

Repeals "equal regulation" statute - Section 25

- Montana's equal regulation statute, in place since 1985, states that all telecommunications companies that provide similar regulated telephone services (basic services) in a market area must be subject to the same standards of regulation by the commission.

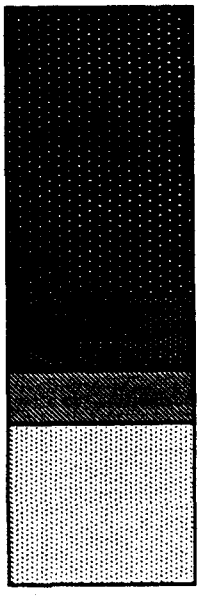
- This repeals equal regulation and allows the commission to determine the level of regulation it will require on each telephone company offering regulated telephone services in the same market based on whatever criteria it decides is appropriate.

Low-income telephone assistance program - Section 26

- Allows the commission to increase the current $3.50 discount that participating local telephone companies give low-income consumers <u>if</u> local telephone rates increase. About 6,500 Montanans a month receive this discount.

Montana average residential telephone bill

$52.69



Interstate long-distance ($26.05)
(offered by companies such as AT&T and MCI)

Instate long-distance ($7.39)

Features ($4.65)

Local service ($14.60)

- **The immediate impact of SB 89 on your telephone bill is**

$ 0

- **The long-term impact of SB 89 on your telephone bill is up to the Montana Public Service Commission**

U S WEST Communications

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 3/27/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

_____ COMMITTEE BILL NO. _____

DATE _____ SPONSOR(S) _____

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Mike Strand Helena	Montana Independent Telecommunications Systems	SB89		✓
Don HUTCHINSON	BANKING & FINANCIAL DIVISION - COMMERCE	SB 379		✓
Tom Ebzery	US West Comm.	SB89		✓
JAMIE Doggett for MARY Doggett	Montana Library Commission	SB89		✓ with Amend.
Lois Fitzpatrick	MT. Library Assoc.	SB 89		✓
Barbara Ranf	US West Communications	SB89		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Business & Labor COMMITTEE BILL NO. _____

DATE 3-27-97 SPONSOR(S) _____

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DAVE BROWN	Mt. Independent Machine Operators Assn	SB 368	~~X~~	X
LARRY AKEY	MT COIN MACHINE OPERATORS ASSOC & VLC	SB 368 & AMEND		X
Robert Ekblad	Telephone HOT Springs	~~SB~~ 89 SB	✓	
Linda Adams	AT+T	SB89		X with amendments
Dan Mandeville	Mont. Tel. Assoc.	SB89		✓
LARRY AKEY	AT & T	SB89		SUPPORT W/ AMEND
JAMES D. FREEMAN	SALISH KOOTENAI COLLEGE	SB89	✓	
Janet Ronan	Mt. Consumer Finance Assn	SB79		✓
Jay Wilson Preston	Ronan Telephone Co.	SB89	✓	
Danny Oberg	PSC	SB89		X with amendments
Patrick Hogan	Touch America	SB89		✓
DENNIS GREEN	Budget Finance for Consumer Finance	SB79		✓
Gary Wiens	Mt. Electric Coops Assn	SB89		✓

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

BUSINESS & LABOR SUB-COMMITTEE DATE 3/27/97

BILL NO. _____ SPONSOR(S) _____

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	Support	Oppose
JEROME ANDERSON	COMNET CELLULAR	IF AMENDED	
PAUL SIERACKI	SPRINT SB89	Information	
BILL RYAN	H.D. 44 IBEW 200	✓	
David Owen	MT Chamber SB89	✓	
Earl Owens	Blackfoot Telephone SB89	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on April 2, 1997, at 8:00 AM, in Room 325

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 604; HB 615 (3/24/97)
Executive Action: SB 89; HB 604; HB 615

HEARING ON HB 615

Opening Statement by Sponsor: **Rep. Cobb,** H D 11 introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: .01; Comments: None.}

Closing by Sponsor: **Rep. Harper** closed.
{Tape: 2; Side: 2; Approx. Time Count: 1.9; Comments: None.}

EXECUTIVE ACTION ON SB 89

Motion: **Rep. Simon** moved do concur SB 89.
{Tape: 2; Side: 2; Approx. Time Count: 7.3; Comments: None.}

Motion/Vote: **Rep. Simon** moved Simon amendments. Motion carried unanimously.
Tape: 2; Side: 2; Approx. Time Count: 8.0; Comments: None.}

Motion/Vote: **Rep. Simon** moved to adopt Mills amendments. Motion carried unanimously.
{Tape: 2; Side: 2; Approx. Time Count: 13.7; Comments: None.}

Motion: **Rep. Simon** moved do concur as amended.
{Tape: 2; Side: 2; Approx. Time Count: 18.8; Comments: None.}

Motion/Vote: **Rep. Devaney** moved to adopt Ronan and Hot Springs conceptual amendments. Motion failed. **3-16 Reps. Krenzler, Tuss and Bookout voted yes.**
{Tape: 2; Side: 2: Approx. Time Count:26.1; Comments: None.}

Motion/Vote: **Rep. Simon** moved do concur as amended. Motion carried. Motion carried 15-4. **Reps. Tropila, Tuss, Ewer and Sliter** voted no.
{Tape: 2; Side: 2; Approx. Time Count: 29.2; Comments: None.}

EXECUTIVE ACTION ON HB 615

Motion: **Rep. Krenzler** moved do pass HB 615.
{Tape: 2; Side: 2; Approx. Time Count: 34.2; Comments: None.}

Motion/Vote:**Rep. Krenzler** moved to adopt Krenzler amendments. Motion carried unanimously.
{Tape: 2; Side: 2; Approx. Time Count: 34.5; Comments: None.}

Motion/Vote:**Rep. Krenzler** moved do pass as amended. Motion carried unanimously.
{Tape: 2; Side: 2; Approx. Time Count: 39.1; Comments: None.}

HOUSE STANDING COMMITTEE REPORT

April 3, 1997

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 89** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Bruce Simon, Chair*

And, that such amendments read: **Carried by: Rep. Simon**

1. Title, page 1, line 30.
Following: "~~SERVICE;~~"
Insert: "ESTABLISHING AN INTERIM UNIVERSAL ACCESS TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL ACCESS AND SERVICE;"

2. Title, page 2, line 6.
Following: ";"
Insert: "ESTABLISHING A COMMITTEE TO MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; APPROPRIATING FUNDS FOR THE COMMITTEE;"

3. Title, page 2, line 8.
Following: "PROVIDING"
Insert: "AN IMMEDIATE"

4. Title, page 2, line 9.
Strike: "DATES"
Insert: "DATE"

4/3

Committee Vote:
Yes 15, No 4.

701147SC.Hgd

5. Page 3, line 6.
Following: "~~22].~~"
Insert: "Under the interim universal access provisions of [sections 20 through 26], the public service commission is to establish surcharge rates as provided in [section 25]. The surcharge rates must take into account different cost structures among telecommunications carriers, particularly the wireless and CATV industry. The retail revenue for these providers should be based on an equitable, per access line, revenue equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary to fund the program. The formulation should consider any overlapping federal discounts. The commission should appoint an oversight group, consisting of users and industry participants, to meet quarterly with the commission to review revenue, discounts, and the administration of [sections 20 through 26]. The public service commission shall also establish a method for paying discount reimbursements in accordance with [section 25]. The public service commission shall cooperate with the department of revenue in determining rates, administering offsets against any surcharges, and other matters necessary for the administration of [sections 20 through 26].

The department of revenue shall administer the collection of the surcharge by rule. Because of the limited duration of the program, it is contemplated that the rules and administration be minimal, flexible, and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the implementation of [sections 20 through 26]."

6. Page 20, lines 12 and 13.
Strike: "DIRECTLY" on line 12
Following: "TO"
Insert: "Montana"
Following: "END-USER"
Strike: the remainder of line 12 through "CORRESPONDING" on line 13
Insert: "customer"

7. Page 21, lines 22 and 23.
Following: "COSTS" on line 22
Strike: the remainder of line 22 through "COMPANIES" on line 23

8. Page 22, line 11.
Following: first "COSTS"
Strike: "CHARGED TO LONG-DISTANCE COMPANIES"

9. Page 23, line 1.
Following: "SERVICES"
Insert: "or facilities"

10. Page 23, line 2.
Following: second "CARRIER"
Strike: "INCLUDE"
Insert: "have been reduced by"
Following: "CONTRIBUTION"
Strike: "FOR"
Insert: "from"

11. Page 23, line 12.
Following: "STANDARDS."
Strike: "IF"
Insert: "(1) Except as provided in subsection (2), if"

12. Page 23, line 15.
Strike: "STANDARDIZED OR"
Following: "DEFAULT"
Insert: "proxy"

13. Page 23, line 16.
Following: "PRICE."
Insert: "The commission shall establish wholesale prices using company-specific costs."

14. Page 23, following line 16.
Insert: "(2) This section does not apply to the prices, terms, and conditions of a final or interim arbitrated interconnection agreement, arbitration decision, or appeal from an agreement or decision if the request for arbitration was filed on or before March 1, 1997."

15. Page 23, line 18.
Following: "(1)"
Strike: "IF"
Insert: "Except as provided in subsection (4), if"

16. Page 23, line 21.
Following: "A"
Insert: "just and reasonable"

17. Page 23, lines 24 and 25.
Strike: "IN" on line 24 through "TOTAL" on line 25

18. Page 23, line 29.
Following: "(C)"
Insert: "a reasonable share of the costs associated with"
Following: "FACTORS"
Strike: "THAT RECOGNIZE THE"
Insert: ", recognizing"

19. Page 24, following line 1.
Insert: "(2) The actual cost of providing the elements included in subsections (1)(a) through (1)(d) must be determined without reference to a rate-of-return or other rate-based proceeding."
Renumber: subsequent subsection

20. Page 24, line 8.
Insert: "(4) This section does not apply to the prices, terms, and conditions of a final or interim arbitrated interconnection agreement, arbitration decision, or appeal from an agreement or decision if the request for arbitration was filed on or before March 1, 1997."

21. Page 24, line 14.
Insert: "NEW SECTION. **Section 20. Interim universal access program -- purpose.** (1) There is an interim universal access program.

(2) The purpose of the interim universal access program is to further the goal of universal access to advanced telecommunications services in Montana by:

(a) increasing safety net coverage through which advanced telecommunications services would, at a minimum, be available through a library, school, or other specified type of public institution in every community in the state;

(b) encouraging innovation in communities to bring advanced services to Montana's rural areas; and

(c) assisting communities that have already succeeded in obtaining services when ongoing transport costs threaten the continued availability of these services.

NEW SECTION. **Section 21. Interim universal access program -- definitions.** As used in [sections 20 though 27], the following definitions apply:

(1) "Administrator" means the public service commission.

(2) "Advanced services" means high-speed (56 kbps and above), dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(3) "Health care provider" means any one of, or a

consortium of, the following institutions located in Montana:
(a) postsecondary educational institutions offering health care instruction;
(b) community health care centers or health centers providing health care to migrants;
(c) local health departments or agencies;
(d) community mental health centers;
(e) not-for-profit hospitals; and
(f) rural health clinics.
(4) "Library" means a library located in Montana that is eligible for participation in state-based plans for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).
(5) "School" means:
(a) an elementary school or secondary school that meets the definition set forth in subsections (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801) and that does not have an endowment of more than $50 million; or
(b) a bureau of Indian affairs elementary and secondary school.
(6) "Tribal college" means a college recognized by the United States government as a tribal college.

NEW SECTION. **Section 22. Interim universal access program -- public access points.** At a minimum, all public access points must provide the general public access to advanced telecommunications services that are not subscription-based. The access must be provided free of charge and at convenient hours on a walk-in basis. Public access points may offer subscription-based services, such as electronic mail, but are not required to administer these types of services.

NEW SECTION. **Section 23. Interim universal access program -- funded services -- application for services.** (1) The universal access program provides funding through discounts only for advanced services for use by public access points, schools, tribal colleges, libraries, and health care providers approved by the administrator.
(2) The first priority of the program is to provide funding for at least one public access point in each Montana community. Subject to available funding, the program shall also provide funding for advanced services to schools, tribal colleges, libraries, and health care providers.
(3) The administrator shall establish discount levels for services in each of the following categories:
(a) public access points;
(b) education services to schools and tribal colleges for

distance learning, electronic access to educational resources, and electronic delivery or reception of educational programming;

(c) library services for libraries not serving as public access points for electronic access to information and library services; and

(d) rural health services to rural health care providers for access to similar services as urban health care providers and to ensure electronic access to health care services.

(4) To receive discounted services under the interim universal access program, public access providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The application must be accompanied by a resolution of support from the governing body of the appropriate city, county, or tribal government in which the applicant is located.

NEW SECTION. **Section 24. Interim universal access program -- services provided at discounts -- reimbursements.** (1) Telecommunications carriers shall provide advanced services to eligible users at specified discounts. The amount of the discount must be reimbursed to the provider from the interim universal access account established in [section 26].

(2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest access point for the requested service. However, the cost to the eligible user may not exceed $100 a month.

(3) If funds from the interim universal access account are not sufficient to fully reimburse for discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced proportionally.

(4) Even if best cost rates available to any business customer increase by more than 5%, the amount payable by an eligible user may not increase by more than 5% during the period from [the effective date of this section] to January 1, 2000.

(5) Subject to restrictions in federal law, if interstate universal access services are established by the federal communications commission, federal funding for universal access services must be used to reduce state funding for intrastate services.

NEW SECTION. **Section 25. Interim universal access program -- funding -- surcharge rate.** (1) (a) The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate telecommunications services in the state. The surcharge must be determined by the administrator by rule. The surcharge must be set and applied to all

telecommunications carriers on a competitively neutral basis.

(b) The rate of the surcharge must be set to raise $250,000 during the fiscal year ending June 30, 1998, and $500,000 during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as necessary.

(c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item on each carrier's retail telecommunications services bills.

(d) The surcharge may be applied only to telecommunications services. Customer premise equipment is not considered a telecommunications service.

(2) The surcharge is payable quarterly to the department of revenue and deposited by the department in the interim universal access account established in [section 26]. The department may by rule:

(a) establish the form of a reporting statement to be filed by telecommunications carriers subject to the surcharge;

(b) set the date after the end of a fiscal quarter that the quarterly payment must be made;

(c) provide for recordkeeping by telecommunications providers subject to the surcharge; and

(d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted services to be reimbursed, and to pay refunds of overpayment of the surcharge.

(3) (a) The collection of a surcharge under this section is subject to:

(i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;

(ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;

(iii) the estimation of tax on failure to file a statement provisions of 15-53-112;

(iv) the warrant for distraint provisions of 15-53-113; and

(v) the statute of limitations provisions of 15-53-115.

(b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this section.

NEW SECTION. **Section 26. Interim universal access program -- account.** An interim universal access account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to [section 25] must be paid to the state treasurer for deposit in the account. After payment of refunds, the balance of the account must be used for the purposes described in [section 24].

NEW SECTION. **Section 27. Commission to make recommendations on universal access and service.** The public service commission shall examine and make recommendations to the 56th legislature on universal access and service. The commission shall:

(1) review the impact on universal access and service in Montana of any federal universal service fund that results from current federal communications rulemaking under the federal Telecommunications Act of 1996; and

(2) evaluate the extent to which the federal universal service fund falls short of supporting legislatively defined universal access and service goals in Montana.

(3) The commission may develop plans and propose legislation that would ensure the attainment of universal access and service goals in Montana."

Renumber: subsequent sections

22. Page 29, line 14.
Strike: "RESALE OF TELECOMMUNICATIONS SERVICES,"

23. Page 29, lines 20 through 22.
Strike: subsection (7) in its entirety
Renumber: subsequent subsections

24. Page 29, line 24.
Following: "MONTANA"
Insert: "and are billed for a service address in Montana"

25. Page 35, line 19.
Insert: "

NEW SECTION. **Section 35. Telecommunications committee.** (1) There is a telecommunications committee. The committee consists of:

(a) two members of the senate, one from each political party, appointed by the committee on committees of the senate;

(b) two members of the house of representatives, one from each political party, appointed by the speaker of the house; and

(c) a representative of the public service commission appointed by the public service commission.

(2) The committee shall monitor federal implementation of the federal Telecommunications Act of 1996, Public Law 104-104. The committee shall recommend to the 56th legislature policies, practices, and statutory changes that are required to implement or conform to the federal implementation.

(3) The office of the consumer counsel shall provide staff assistance to the committee.

NEW SECTION. **Section 36. Appropriation.** (1) Subject to funds being available pursuant to subsection (2), there is appropriated from the state special revenue fund up to $30,000 to the office of the consumer counsel for purposes of [section 35].

(2) The telecommunications committee may accept gifts, grants, and donations for deposit in the state special revenue fund for purposes of [section 35]."
Renumber: subsequent sections

26. Page 35, lines 20 and 22.
Strike: "19" in two places
Insert: "27" in both places

27. Page 36, lines 4 through 6.
Following: "**Effective**" on line 4
Strike: "**dates**"
Insert: "**date.**"
Following: "~~**rulemaking**~~"
Strike: the remainder of line 4 through "1997" on line 6
Insert: "[This act] is effective on passage and approval"

-END-

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL DATE 4/2/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		

SENATE BILL NO. 89

INTRODUCED BY BECK

BY REQUEST OF THE BLUE RIBBON TELECOMMUNICATIONS TASK FORCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR FEDERAL UNIVERSAL SERVICE SUPPORT; ~~PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY ADOPT RULES TO ALLOW VERIFICATION OF A SUBSCRIBER'S CHANGE IN TELECOMMUNICATIONS SERVICES AND PROVIDING A PENALTY FOR VIOLATION OF THE VERIFICATION RULES; ALLOWING FOR SPECIAL RATEMAKING PROCEDURES; RESTRICTING THE RESALE OF CERTAIN TELECOMMUNICATIONS SERVICES;~~ PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS SERVICES, INCLUDING INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES; AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED TELECOMMUNICATIONS PROVIDERS; ~~CHANGING THE TYPES OF REGULATION AND CRITERIA FOR ALTERNATIVE REGULATION OF TELECOMMUNICATIONS PROVIDERS;~~ INCREASING THE AMOUNT OF ASSISTANCE IN THE TELEPHONE LOW-INCOME ASSISTANCE PROGRAM; ~~ESTABLISHING AN INTERIM UNIVERSAL ACCESS TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL ACCESS AND SERVICE;~~ ESTABLISHING AN INTERIM UNIVERSAL ACCESS TO THE ADVANCED

TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL ACCESS AND SERVICE; CREATING A UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES SUPPORTED BY THE FUND AND OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM TELECOMMUNICATIONS CARRIERS BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS CARRIERS' RETAIL REVENUE; PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATELY CONTRACTED ENTITY UNDER THE DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR DISTRIBUTIONS FROM THE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; ESTABLISHING A COMMITTEE TO MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; APPROPRIATING FUNDS FOR THE COMMITTEE; AMENDING SECTIONS 2-4-102, ~~35-18-503,~~ 69-3-305, ~~69-3-801, 69-3-802,~~ 69-3-803, 69-3-805, 69-3-806, 69-3-807, ~~69-3-809, 69-3-811,~~ AND 69-3-1001, MCA; REPEALING SECTIONS 69-6-101, 69-6-102, AND 69-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE ~~DATES~~ DATE~~, AN APPLICABILITY DATE,~~ AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the public service commission ~~and to the department of revenue~~.

[Section ~~4~~ 3] authorizes the public service commission to adopt procedural rules relating to mediation and arbitration for interconnection proceedings.

~~[Section 12] grants rulemaking authority to the public service commission to make rules establishing verification procedures for the submission or execution of a change in a subscriber's selection of a provider of telecommunications services. The rules are to address the problems of "slamming" a change in service providers that was unauthorized or a service change authorization that was made under deceptive or misleading circumstances.~~

~~Under the interim universal access provisions of [sections 16 through 22], the public service~~

~~commission is to establish surcharge rates as provided in [section 21]. The surcharge rates must take into account different cost structures among telecommunications carriers, particularly the wireless and CATV industry. The retail revenue for these providers should be based on an equitable, per access line, revenue equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary to fund the program. The formulation should consider any overlapping federal discounts. The commission should appoint an oversight group consisting of users and industry participants, to meet quarterly with the commission to review revenue, discounts, and the administration of [sections 16 through 22]. The public service commission shall also establish a method for paying discount reimbursements in accordance with [section 20]. The public service commission shall cooperate with the department of revenue in determining rates, administering offsets against any surcharges, and other matters necessary for the administration of [sections 16 through 22].~~

~~The department of revenue shall administer the collection of the surcharge by rule. Because of the limited duration of the program, it is contemplated that the rules and administration be minimal, flexible, and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the implementation of [sections 16 through 22].~~ UNDER THE INTERIM UNIVERSAL ACCESS PROVISIONS OF [SECTIONS 20 THROUGH 26], THE PUBLIC SERVICE COMMISSION IS TO ESTABLISH SURCHARGE RATES AS PROVIDED IN [SECTION 25]. THE SURCHARGE RATES MUST TAKE INTO ACCOUNT DIFFERENT COST STRUCTURES AMONG TELECOMMUNICATIONS CARRIERS, PARTICULARLY THE WIRELESS AND CATV INDUSTRY. THE RETAIL REVENUE FOR THESE PROVIDERS SHOULD BE BASED ON AN EQUITABLE, PER ACCESS LINE, REVENUE EQUIVALENT. THE COMMISSION SHALL ALSO SET THE SURCHARGE RATE TO PRODUCE THE AMOUNT OF REVENUE NECESSARY TO FUND THE PROGRAM. THE FORMULATION SHOULD CONSIDER ANY OVERLAPPING FEDERAL DISCOUNTS. THE COMMISSION SHOULD APPOINT AN OVERSIGHT GROUP, CONSISTING OF USERS AND INDUSTRY PARTICIPANTS, TO MEET QUARTERLY WITH THE COMMISSION TO REVIEW REVENUE, DISCOUNTS, AND THE ADMINISTRATION OF [SECTIONS 20 THROUGH 26]. THE PUBLIC SERVICE COMMISSION SHALL ALSO ESTABLISH A METHOD FOR PAYING DISCOUNT REIMBURSEMENTS IN ACCORDANCE WITH [SECTION 25]. THE PUBLIC SERVICE COMMISSION SHALL COOPERATE WITH THE DEPARTMENT OF REVENUE IN DETERMINING RATES, ADMINISTERING OFFSETS AGAINST ANY SURCHARGES, AND OTHER MATTERS NECESSARY FOR THE ADMINISTRATION OF [SECTIONS 20 THROUGH 26].

THE DEPARTMENT OF REVENUE SHALL ADMINISTER THE COLLECTION OF THE SURCHARGE BY

RULE. BECAUSE OF THE LIMITED DURATION OF THE PROGRAM, IT IS CONTEMPLATED THAT THE RULES AND ADMINISTRATION BE MINIMAL, FLEXIBLE, AND AS UNOBTRUSIVE AS POSSIBLE WHILE ENSURING THAT THERE ARE SUFFICIENT ADMINISTRATIVE POWERS TO ENABLE THE IMPLEMENTATION OF [SECTIONS 20 THROUGH 26].

UNDER [SECTION 13], THE PUBLIC SERVICE COMMISSION SHALL ADMINISTER A CONTRACT WITH A THIRD PARTY THAT WILL MANAGE THE UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS SERVICES ON A DAILY BASIS. THE THIRD PARTY IS RESPONSIBLE FOR THE COLLECTION OF CONTRIBUTIONS TO THE FUND. THE THIRD PARTY IS ALSO RESPONSIBLE FOR SETTING THE AMOUNT OF CONTRIBUTION BASED ON TOTAL RETAIL REVENUE OF TELECOMMUNICATIONS CARRIERS OPERATING IN MONTANA. THE PUBLIC SERVICE COMMISSION SHALL ADOPT PROCEDURAL RULES FOR THE COLLECTION OF THE CONTRIBUTIONS. THE PUBLIC SERVICE COMMISSION SHALL ALSO ADOPT RULES ALLOWING THE THIRD PARTY TO ASSESS LATE FEES AND INTEREST ON LATE PAYMENTS OF CONTRIBUTIONS. THE RULES MUST SET INTEREST RATES AND PENALTIES FOR LATE PAYMENTS.

[SECTION 14] AUTHORIZES THE PUBLIC SERVICE COMMISSION TO ADOPT PROCEDURAL RULES RELATING TO THE COLLECTION OF CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND. [SECTION 14] AUTHORIZES THE PUBLIC SERVICE COMMISSION TO ADOPT RULES FOR THE ASSESSMENT OF LATE FEES AND INTEREST ON CONTRIBUTIONS TO THE FUND.

[SECTION 15] REQUIRES THE PUBLIC SERVICE COMMISSION TO ADOPT RULES ESTABLISHING AFFORDABILITY BENCHMARKS FOR LOCAL SERVICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. **Section 1. Statement of policies.** (1) The commission shall, in the exercise of the powers conferred upon it under Montana law, consider the following declared policies of the state of Montana:~~

~~(a) The state of Montana shall encourage competition on a neutral basis and provide neither competitive advantage nor a competitive disadvantage to any telecommunications carrier.~~

~~(b) The regulation of telecommunications carriers by the commission should attempt to produce the same benefits for carriers as competition that includes:~~

~~(i) the ability to enter and exit markets quickly and easily;~~

~~(ii) the ability to price efficiently and flexibly; and~~

~~(iii) incentives to:~~

~~(A) offer new products and services;~~

~~(B) create operating and investing efficiencies; and~~

~~(C) stimulate sales of existing services.~~

~~(c) It is the objective of the state of Montana to make basic telecommunications services available at the lowest possible price to all Montanans.~~

~~(d) It is the objective of the state of Montana to provide at least a minimum level of public access to advanced telecommunications services through a library, school, or public institution in every Montana community under the universal service access provisions in [sections 16 through 22].~~

~~(e) The advanced telecommunications services available in urban areas of Montana should also be available in rural areas at rates reasonably comparable to rates in urban areas.~~

~~(f) All Montanans should have the ability to route their telecommunications to their carriers of choice without the need to dial extra codes.~~

~~(g) Montana customers should have the ability to retain their telephone numbers when they switch carriers within their local exchange area. Number portability should be provided, to the extent technically feasible and economically reasonable, in accordance with the requirements prescribed by the federal communications commission. The cost to implement number portability should be borne by all telecommunications carriers on a competitively neutral basis. Rural telephone companies may petition the commission for suspension or modification of these requirements.~~

~~(h) The commission should proceed at a reasonable speed, based on demonstrated demand, to unbundle the network elements at technically feasible points.~~

~~(i) The commission is responsible for ensuring that prices for regulated telecommunications services are priced above relevant costs to prevent cross-subsidization and predatory pricing.~~

~~(j) During the transition to local competition, the commission and regulated telecommunications carriers are encouraged to review and remove any implicit subsidies and any other government-imposed mandates that inhibit competition.~~

~~(k) When establishing new depreciation rates for ratemaking purposes, forward-looking asset lives, consistent with the competitive market and consistent with the asset lives used by competing providers of similar services, should be used.~~

~~(2) (a) This section does not alter the state policy of local control and regulation of cooperatives through their elected boards of trustees and membership as provided in Title 35, chapter 18. However, cooperatives providing telecommunications services are subject to registration requirements and other provisions applicable to all other unregulated telecommunications carriers.~~

~~(b) This section does not grant the commission any power not otherwise provided in another section of this title applicable to the regulation of carriers of regulated telecommunications service.~~

NEW SECTION. **Section 1. Interconnection -- construction and effect.** [Sections ~~5 through 10~~ 1 THROUGH 19] do not grant any jurisdiction to the commission over telecommunications carriers except as expressly set forth in [sections ~~5 through 10~~ 1 THROUGH 19], and [sections ~~5 through 10~~ 1 THROUGH 19] may not be construed to limit or repeal exemptions from the commission's jurisdiction otherwise recognized by statute or law. Legislation may not be considered to supersede or modify any provision of [sections ~~5 through 10~~ 1 THROUGH 19] except to the extent that the legislation does so expressly.

NEW SECTION. **Section 2. Interconnection -- jurisdiction.** In addition to the authority granted to the commission in 69-3-102 to supervise and regulate public utilities, the commission has authority, for the purposes of implementing [sections ~~5 through 10~~ 1 THROUGH 9], over all telecommunications carriers.

NEW SECTION. **Section 3. Rulemaking authority.** The commission may adopt rules of procedure to implement [sections ~~7 and 8~~ 6 THROUGH 10].

NEW SECTION. **Section 4. Duty to interconnect.** (1) The purpose of this section is to implement specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

(2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

(b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

(c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(c).

(3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection (2)(c) do not apply to a rural telephone company until:

(i) the company has received a bona fide request for interconnection, services, or network

elements; and

(ii) the commission determines under subsection (3)(b) that the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)).

(b) The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the commission. The commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a). Within 120 days after the commission receives notice of the request, the commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with the federal communications commission's regulations.

(4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a cable operator providing video programming and seeking to provide any telecommunications service in the area in which the rural telephone company was providing video programming on February 8, 1996.

(5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the aggregate nationwide, may petition the commission for a suspension or modification of the application of a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition. The commission shall grant the petition for the suspension or modification to the extent and for the duration that the commission determines:

(i) is necessary:

(A) to avoid a significant adverse economic impact on users of telecommunications services generally;

(B) to avoid imposing a requirement that is unduly economically burdensome; or

(C) to avoid imposing a requirement that is technically infeasible; and

(ii) is consistent with the public interest, convenience, and necessity.

(b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days after receiving the petition. Pending action, the commission may suspend enforcement of the requirement to which the petition applies with respect to the petitioning carrier.

NEW SECTION. **Section 5. Voluntary negotiation of interconnection agreements.** Upon receiving a request for interconnection, services, or network elements pursuant to [section ~~5~~ 4], an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier without regard to the duties set forth in [section ~~5(2)(b)~~ 4(2)(B) or (2)(c)]. The agreement must include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement.

NEW SECTION. **Section 6. Mediation of interconnection agreements.** Upon the written request of any party negotiating an agreement for interconnection with another telecommunications carrier, the commission may designate a mediator, who may be a commission member, to mediate any differences arising in the course of the negotiation.

NEW SECTION. **Section 7. Arbitration of interconnection issues.** (1) The commission has the authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except as expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not apply to arbitrations conducted under the authority granted by this section.

(2) During the period from the 135th to the 160th day, inclusive, after the date on which an incumbent local exchange carrier receives a request for negotiation under [section ~~5~~ 4], the carrier or any other party to the negotiation may petition the commission to arbitrate any open issues. A party that petitions the commission under this section shall, at the same time as it submits the petition, provide the commission all relevant documentation concerning the following:

(a) the unresolved issues;

(b) the position of each of the parties with respect to those issues; and

(c) any other issue discussed and resolved by the parties.

(3) A party petitioning the commission under this section shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the commission receives the petition.

(4) A nonpetitioning party to a negotiation under [section ~~5~~ 4] may respond to the other party's petition and provide any additional information that it wishes within 25 days after the commission receives

the petition.

(5) The commission shall limit its consideration to those issues set forth by the parties to the negotiation in the petition for arbitration and the response to the petition.

(6) The commission may appoint a hearings examiner for arbitration proceedings under this section. The hearings examiner shall file with the commission a proposed decision within the time set by order of the commission. A hearings examiner must be assigned with regard to the expertise required for the particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the record in the case. The commission may disqualify the hearings examiner and appoint another hearings examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

(7) Participation in the arbitration proceeding must be limited to the telecommunications carrier requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and the Montana consumer counsel.

(8) Negotiations among the telecommunications carriers may continue, pending a final decision by the arbitrator.

(9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and a hearing date.

(10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties are entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(11) The commission may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being arbitrated and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the hearings and the need for filing briefs and may direct the parties to appear and confer to consider

simplification of the issues by consent of the parties.

(12) THE COMMISSION SHALL ISSUE ITS FINAL DECISION NO LATER THAN 9 MONTHS AFTER THE REQUEST FOR NEGOTIATIONS ON A PETITION ISSUED UNDER [SECTION 4]. When the commission files its final decision or when the hearings examiner files the proposed decision with the commission, each party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

(a) ensure the resolution of issues presented by the parties and ensure that the resolution meets the requirements of [section ~~5~~ 4] and this section;

(b) establish rates for interconnection, services, or access to unbundled network elements pursuant to 47 U.S.C. 252(d); and

(c) provide a schedule for implementation of the terms and conditions of the decision by the parties.

(13) If the person who conducted the hearing becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(14) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

NEW SECTION. **Section 8. Approval of arbitration decision.** (1) If the commission has not approved or rejected in its entirety an agreement adopted by arbitration under [section ~~8(12)~~ 7(12)] within 30 days of submission by the parties, the agreement is considered approved.

(2) The commission may reject the agreement only if the commission finds that the agreement does not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of an agreement, the commission shall provide the parties with written findings as to any deficiencies.

NEW SECTION. **Section 9. Approval of interconnection agreements.** (1) Within 90 days of filing of an interconnection agreement adopted by negotiation of the parties to an agreement, the commission shall

approve or reject the agreement, or the agreement is considered approved.

(2) The commission may reject an agreement filed under this section only if the commission finds that:

(a) the agreement or a portion of the agreement discriminates against a telecommunications carrier not a party to the agreement; or

(b) the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity.

(3) Upon rejecting an agreement filed under this section, the commission shall issue written findings detailing any deficiencies in the agreement.

NEW SECTION. **Section 10. Determination of eligible carrier status -- universal service support.** (1) The commission is authorized to designate telecommunications carriers as eligible for federal universal service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, AND FOR ANY MONTANA UNIVERSAL SERVICE FUNDS. This authorization applies to all telecommunications carriers notwithstanding the carrier's exemption from further regulation by the commission.

(2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a service area designated by the commission. In the case of an area served by a rural telephone company, the term "service area" means the company's "study area" FOR FEDERAL UNIVERSAL SERVICE SUPPORT unless the federal communications commission establishes a different definition of service area for the company. The term "service area" for all other telecommunications carriers means a geographic area such as a census block or grid block as established by the commission for the purpose of determining FEDERAL universal service obligations and support mechanisms.

(3) Upon receiving a petition from a telecommunications carrier and consistent with the public interest, convenience, and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(4) If no telecommunications carrier will provide the services that are supported by universal service support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests service, the commission shall determine which telecommunications carrier is best able to provide the service to the requesting unserved community. Any telecommunications carrier ordered to provide service under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible telecommunications carrier for that community or the unserved portion of the community.

(5) The commission shall permit an eligible telecommunications carrier to relinquish its designation as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the commission approves relinquishment under this section, within which the purchase or construction must be completed.

~~NEW SECTION. **Section 12. Illegal changes in subscriber carrier selections.** (1) A telecommunications carrier may not submit or execute a change in a subscriber's selection of a provider of telecommunications services except in accordance with verification procedures that the commission has adopted by rule pursuant to this section.~~

~~(2) Any telecommunications carrier that violates the verification procedures described in subsection (1) and that collects charges for telecommunications services from a subscriber is liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation, in accordance with procedures that the commission has adopted by rule pursuant to this section. The remedy provided by this section is in addition to any other remedies available by law.~~

~~NEW SECTION. **Section 13. Special ratemaking procedures.** (1) A provider of regulated~~

~~telecommunications services may file with the commission, and the commission shall expeditiously hear, an application to eliminate or minimize a noncost-based differential in the price of its telecommunications services without reestablishing its cost of providing all regulated telecommunications services.~~

~~(2) If, upon hearing the application, the commission determines that a noncost-based differential exists in the prices of the services of the provider of regulated telecommunications services, it may authorize the provider to eliminate or minimize the differential in a fashion that neither increases nor decreases the revenue currently being earned by the provider in providing those services.~~

~~(3) The commission may, in its discretion, require any change in prices required by subsection (2) to be implemented over a transition period not exceeding 3 years.~~

NEW SECTION. ~~**Section 14. Biennial report on telecommunications.** The commission is directed to prepare a status report, limited to data readily available by the commission, to the governor and the legislature by December 1 of each even-numbered year. The report must include:~~

~~(1) a summary of the implementation of [sections 16 through 22] and this part;~~

~~(2) a summary of the status of competition in the telecommunications industry in Montana, including effects on universal service, rates, technological deployment, and economic development;~~

~~(3) a comparison of Montana's progress in relation to neighboring states and the nation in the development of an affordable advanced telecommunications system necessary to maintain and advance Montana's economic viability in a global economy;~~

~~(4) changes in regulation that can or should be implemented pursuant to the level of competition in the telecommunications industry; and~~

~~(5) recommended changes to Montana law to further the goals of [sections 16 through 22] and this part.~~

NEW SECTION. ~~**Section 15. Restrictions on resale.** The resale of telecommunications services is subject to the following restrictions:~~

~~(1) Services that are available for resale at a discounted rate do not include carrier access services.~~

~~(2) Resale is limited to retail products and services available to end-user customers. Wholesale services are available only for resale and not predominantly for internal use.~~

~~(3) Consistent with the federal Telecommunications Act of 1996, Public Law 104-104, resale~~

~~between categories of customers is prohibited until any pricing disparity for the same service offered to different categories of customers has been eliminated.~~

~~(4) Any explicit universal service support to a specific category of customers may not be redistributed to another category of customers through resale.~~

~~(5) Lifeline and other means-tested services offerings may be resold only to customers who qualify for the service.~~

~~NEW SECTION.~~ ~~**Section 16. Interim universal access program -- purpose.**~~ ~~(1) There is an interim universal access program.~~

~~(2) The purpose of the interim universal access program is to further the goal of universal access to advanced telecommunications services in Montana by:~~

~~(a) increasing safety net coverage through which advanced telecommunications services would, at a minimum, be available through a library, school, or other specified type of public institution in every community in the state;~~

~~(b) encouraging innovation in communities to bring advanced services to Montana's rural areas; and~~

~~(c) assisting communities that have already succeeded in obtaining services when ongoing transport costs threaten the continued availability of these services.~~

~~NEW SECTION.~~ ~~**Section 17. Interim universal access program -- definitions.**~~ ~~As used in [sections 16 though 22], the following definitions apply:~~

~~(1) "Administrator" means the public service commission.~~

~~(2) "Advanced services" means high-speed (56 kbps and above), dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.~~

~~(3) "Health care provider" means any one of, or a consortium of, the following institutions located in Montana:~~

~~(a) postsecondary educational institutions offering health care instruction;~~

~~(b) community health care centers or health centers providing health care to migrants;~~

~~(c) local health departments or agencies;~~

~~(d) community mental health centers;~~

~~(e) not-for-profit hospitals; and~~

~~(f) rural health clinics.~~

~~(4) "Library" means a library located in Montana that is eligible for participation in state-based plans for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).~~

~~(5) "School" means:~~

~~(a) an elementary school or secondary school that meets the definition set forth in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801) and that does not have an endowment of more than $50 million; or~~

~~(b) a bureau of indian affairs elementary and secondary school.~~

~~(6) "Tribal college" means a college recognized by the United States government as a tribal college.~~

~~NEW SECTION. Section 18. Interim universal access program -- public access points. At a minimum, all public access points must provide the general public access to advanced telecommunications services that are not subscription based free of charge and at convenient hours on a walk-in basis. Public access points may offer subscription-based services, such as electronic mail, but are not required to administer these types of services.~~

~~NEW SECTION. Section 19. Interim universal access program -- funded services -- application for services. (1) The universal access program provides funding through discounts only for advanced services for use by public access points, schools, tribal colleges, libraries, and health care providers approved by the administrator.~~

~~(2) The first priority of the program is to provide funding for at least one public access point in each Montana community. Subject to available funding, the program shall also provide funding for advanced services to schools, tribal colleges, libraries, and health care providers.~~

~~(3) The administrator shall establish discount levels for services in each of the following categories:~~

~~(a) public access points;~~

~~(b) education services to schools and tribal colleges for distance learning, electronic access to educational resources, and electronic delivery or reception of educational programming;~~

~~(c) library services for libraries not serving as public access points for electronic access to~~

~~information and library services; and~~

~~(d) rural health services to rural health care providers for access to similar services as urban health care providers and to ensure electronic access to health care services.~~

~~(4) To receive discounted services under the interim universal access program, public access providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The application must be accompanied by a resolution of support from the governing body of the appropriate city, county, or tribal government in which the applicant is located.~~

NEW SECTION. ~~**Section 20. Interim universal access program -- services provided at discounts -- reimbursements.** (1) Telecommunications carriers shall provide advanced services to eligible users at specified discounts. The amount of the discount must be reimbursed to the provider from the interim universal access account established in [section 22].~~

~~(2) Except as provided in subsection (3), the advanced discount is equal to 60% of the best cost rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest access point for the requested service. However, the cost to the eligible user may not exceed $100 a month.~~

~~(3) If funds from the interim universal access account are not sufficient to fully reimburse for discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced proportionally.~~

~~(4) Even if best cost rates available to any business customer increase by more than 5%, the amount payable by an eligible user may not increase by more than 5% during the period from [the effective date of this section] to January 1, 2000.~~

~~(5) Subject to restrictions in federal law, if interstate universal access services are established by the federal communications commission, federal funding for universal access services must be used to reduce state funding for intrastate services.~~

NEW SECTION. ~~**Section 21. Interim universal access program -- funding -- surcharge rate.** (1)(a) The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate telecommunications services in the state. The surcharge must be determined by the administrator by rule. The surcharge must be set and applied to all telecommunications carriers on a competitively neutral basis.~~

~~(b) The rate of the surcharge must be set to raise $500,000 during the fiscal year ending June 30, 1998, and $1 million during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as necessary.~~

~~(c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item on each carrier's retail telecommunications services bills.~~

~~(d) The surcharge may be applied only to telecommunications services. Customer premise equipment is not considered a telecommunications service.~~

~~(2) The surcharge is payable quarterly to the department of revenue and deposited by the department in the interim universal access account established in [section 22]. The department may by rule:~~

~~(a) establish the form of a reporting statement to be filed by telecommunications carriers subject to the surcharge;~~

~~(b) set the date after the end of a fiscal quarter that the quarterly payment must be made;~~

~~(c) provide for recordkeeping by telecommunications providers subject to the surcharge; and~~

~~(d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted services to be reimbursed, and to pay refunds of overpayment of the surcharge.~~

~~(3) (a) The collection of a surcharge under this section is subject to:~~

~~(i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;~~

~~(ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;~~

~~(iii) the estimation of tax on failure to file a statement of provisions of 15-53-112;~~

~~(iv) the warrant for distraint provisions of 15-53-113; and~~

~~(v) the statute of limitations provisions of 15-53-115.~~

~~(b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this section.~~

~~NEW SECTION. **Section 22. Interim universal access program -- account.** An interim universal access account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to [section 21] must be paid to the state treasurer for deposit in the account. After payment of refunds, the balance of the account must be used for the purposes~~

~~described in [section 20].~~

~~NEW SECTION. Section 23. Commission to make recommendations on universal access and service. The public service commission shall examine and make recommendations to the 56th legislature on universal access and service. The commission shall:~~

~~(1) review the impact on universal access and service in Montana of any federal universal service fund that results from current federal communications rulemaking under the federal Telecommunications Act of 1996;~~

~~(2) evaluate the extent to which the federal universal service fund falls short of supporting legislatively defined universal access and service goals in Montana; and~~

~~(3) develop plans and propose legislation for the establishment of a state universal service fund that would ensure the attainment of these goals.~~

NEW SECTION. **SECTION 11. UNIVERSAL SERVICE POLICIES.** THE LEGISLATURE FINDS THAT UNIVERSALLY AVAILABLE TELECOMMUNICATIONS SERVICES ARE ESSENTIAL TO THE HEALTH, WELFARE, AND ECONOMIC WELL-BEING OF THE CITIZENS OF MONTANA. THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, PUBLIC LAW 104-104, REQUIRES A TRANSITION TO LOCAL COMPETITION. IMPLICIT SUBSIDIES HAVE HISTORICALLY BEEN USED TO FURTHER THE PUBLIC POLICY OF KEEPING LOCAL RATES TO CUSTOMERS IN HIGH-COST AREAS AT AFFORDABLE LEVELS. THE FEDERAL ACT AND THE TRANSITION TO COMPETITION REQUIRE THAT ALL SUBSIDIES USED TO KEEP LOCAL RATES AT AFFORDABLE LEVELS BE EXPLICIT. ADDITIONALLY, THE FEDERAL ACT'S UNIVERSAL SERVICE PROVISIONS ESTABLISH A SYSTEM OF DISCOUNTS FOR SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS. SECURING THESE DISCOUNTS CAN BE DEPENDENT ON STATE ACTIONS. IN ORDER TO PRESERVE AND ADVANCE THE GOAL OF UNIVERSAL SERVICE IN THE NEW COMPETITIVE ENVIRONMENT ESTABLISHED BY THE FEDERAL ACT, THE LEGISLATURE FINDS THAT A NEW MONTANA UNIVERSAL SERVICE FUND, SUPPORTED BY CONTRIBUTIONS FROM THE TELECOMMUNICATIONS CARRIERS OPERATING IN MONTANA, SHOULD BE CREATED THAT WILL:

(1) NOT DUPLICATE THE FEDERAL UNIVERSAL SERVICE FUND MANDATED BY THE TELECOMMUNICATIONS ACT OF 1996 BUT THAT WILL COMPLEMENT THE FEDERAL FUND BY PROVIDING ADDITIONAL FUNDING AS NECESSARY TO ENSURE UNIVERSAL SERVICE IN THE STATE OF

MONTANA;

(2) BE COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL IN BOTH FUNDING AND DISTRIBUTION;

(3) PROVIDE A SPECIFIC, PREDICTABLE, AND SUFFICIENT MECHANISM OF SUPPORT FOR HIGH-COST AREAS; AND

(4) ALLOW FOR IMPLEMENTATION OF THE FEDERAL SUPPORT SYSTEM FOR TELECOMMUNICATIONS SERVICES PROVIDED TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS.

NEW SECTION. **SECTION 12. UNIVERSAL SERVICE FUND ESTABLISHED -- PURPOSE.** (1) PURSUANT TO A DETERMINATION OF NEED, THE COMMISSION SHALL ESTABLISH AND ADMINISTER A FUND TO ASSIST ELIGIBLE TELECOMMUNICATIONS CARRIERS IN PROVIDING AFFORDABLE TELECOMMUNICATIONS SERVICES IN HIGH-COST AREAS. THE FUND MUST PROVIDE SUPPORT FOR THE FOLLOWING SERVICES:

(A) VOICE GRADE ACCESS TO THE PUBLIC SWITCHED NETWORK, INCLUDING SOME USAGE;

(B) DUAL-TONE MULTIFREQUENCY (DTMF OR "TOUCH TONE") SIGNALING OR ITS EQUIVALENT;

(C) SINGLE-PARTY SERVICE;

(D) ACCESS TO EMERGENCY SERVICES, INCLUDING ACCESS TO 9-1-1, WHERE AVAILABLE, AND ACCESS TO ENHANCED 9-1-1 WHEN REQUESTED BY A TELECOMMUNICATIONS CARRIER'S LOCAL COMMUNITY AND WHEN THE TELECOMMUNICATIONS CARRIER HAS TECHNICAL CAPACITY TO PROVIDE IT;

(E) ACCESS TO OPERATOR SERVICES;

(F) ACCESS TO INTEREXCHANGE SERVICES; AND

(G) ACCESS TO DIRECTORY ASSISTANCE.

(2) THE FUND MUST SUPPORT ONLY ACCESS TO THE SERVICES LISTED IN SUBSECTIONS (1)(D) THROUGH (1)(G) AND NOT SUPPORT THE SERVICES THEMSELVES.

(3) THE FUND MUST BE ADMINISTERED TO ENSURE THAT ITS OPERATION IS COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL.

NEW SECTION. **SECTION 13. FUND ADMINISTRATOR.** (1) A FISCAL AGENT AND DAILY

ADMINISTRATOR MUST BE SELECTED TO RECEIVE AND DISTRIBUTE FUNDS UNDER [SECTIONS 11 THROUGH 15].

(2) THE FISCAL AGENT MUST BE SELECTED BY THE COMMISSION BASED UPON A COMPETITIVE BIDDING PROCESS AFTER AN OPPORTUNITY FOR PUBLIC COMMENT ON THE SPECIFIC QUALIFICATIONS REQUIRED OF THE FISCAL AGENT. A TELECOMMUNICATIONS CARRIER IS NOT ELIGIBLE TO BE THE FISCAL AGENT. THE DUTIES OF THE FISCAL AGENT MUST BE DETERMINED BY A CONTRACT CONSISTENT WITH [SECTIONS 11 THROUGH 15]. THE CONTRACT TERM OF THE FISCAL AGENT MUST EXPIRE DECEMBER 31, 1999.

(3) THE FISCAL AGENT SHALL PROVIDE QUARTERLY REPORTS OF FUND ACTIVITIES TO THE COMMISSION AND SHALL PROVIDE AUDITS ANNUALLY BY A CERTIFIED PUBLIC ACCOUNTANT IN A MANNER DETERMINED BY AND UNDER THE DIRECTION OF THE COMMISSION.

(4) THE FINANCIAL ACCOUNTS OF THE FISCAL AGENT MUST BE AVAILABLE AT REASONABLE TIMES TO ANY TELECOMMUNICATIONS CARRIER IN THE STATE AND TO THE PUBLIC. THE COMMISSION MAY INVESTIGATE THE ACCOUNTS AND PRACTICES OF THE FISCAL AGENT AND ENTER ORDERS CONCERNING THE ACCOUNTS AND PRACTICES.

NEW SECTION. **SECTION 14. CONTRIBUTIONS TO FUND.** (1) THE FISCAL AGENT SHALL COLLECT CONTRIBUTIONS FROM ALL TELECOMMUNICATIONS CARRIERS ON A QUARTERLY BASIS, BASED ON A JULY 1 TO JUNE 30 FISCAL YEAR. INITIAL CONTRIBUTIONS TO THE FUND MAY ONLY BE COLLECTED FOR THE 2-MONTH PERIOD PRIOR TO THE EFFECTIVE DATE OF DISTRIBUTIONS FROM THE FUND AND MUST BE CALCULATED AS FOLLOWS:

(A) DETERMINE THE TOTAL RETAIL REVENUE FOR ALL TELECOMMUNICATIONS CARRIERS FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(B) DETERMINE THE TOTAL FUNDS NEEDED FOR DISTRIBUTIONS IN THE NEXT FISCAL YEAR AS AUTHORIZED PURSUANT TO [SECTION 15];

(C) COMPUTE A UNIFORM PERCENTAGE OF THE AMOUNT DETERMINED IN SUBSECTION (1)(A) THAT WILL PRODUCE AN AMOUNT EQUAL TO THE FUND TOTAL CALCULATED IN SUBSECTION (1)(B);

(D) ADJUST THE PERCENTAGE MULTIPLIER COMPUTED IN SUBSECTION (1)(C) TO RECOVER OR REIMBURSE ANY FUND SHORTFALLS OR EXCESSES IN THE PREVIOUS FISCAL YEAR; AND

(E) SEND NOTICE OF THE CURRENT UNIFORM PERCENTAGE AND APPROPRIATE REMITTANCE

FORMS TO EACH TELECOMMUNICATIONS CARRIER AT LEAST 2 MONTHS PRIOR TO THE EFFECTIVE DATE OF THE APPLICATION OF THE PERCENTAGE.

(2) THE COMMISSION SHALL ADOPT PROCEDURAL RULES TO GOVERN COLLECTION OF THE CONTRIBUTIONS REQUIRED BY THIS SECTION, AS WELL AS RULES ALLOWING THE FISCAL AGENT AND DAILY ADMINISTRATOR TO ASSESS LATE FEES AND INTEREST ON DELINQUENT PAYMENTS FROM TELECOMMUNICATIONS CARRIERS. THE FISCAL AGENT IS SPECIFICALLY AUTHORIZED TO ENFORCE THE CONTRIBUTION REQUIREMENTS OF THIS SECTION THROUGH SUIT IN THE DISTRICT COURTS OF MONTANA.

(3) ANY REDUCTION IN TELECOMMUNICATIONS CARRIER ACCESS EXPENSES BECAUSE OF THE REMOVAL OF IMPLICIT SUBSIDIES INHERENT IN TELECOMMUNICATIONS CARRIER ACCESS RATES MUST BE ~~DIRECTLY~~ PASSED THROUGH TO MONTANA END-USER ~~CUSTOMERS BY A REDUCTION IN CORRESPONDING~~ CUSTOMER RETAIL RATES.

NEW SECTION. **SECTION 15. DISTRIBUTIONS FROM FUND -- CALCULATION OF COSTS.** (1) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, PAYMENTS FROM THE FUND MUST BE MADE BY THE FISCAL AGENT TO QUALIFYING ELIGIBLE TELECOMMUNICATIONS CARRIERS, ON A MONTHLY BASIS, PURSUANT TO RULES ADOPTED BY THE COMMISSION.

(2) ONLY ELIGIBLE TELECOMMUNICATIONS CARRIERS THAT OFFER THE TELECOMMUNICATIONS SERVICES DESCRIBED IN [SECTION 12(1)] TO ALL CUSTOMERS IN A DESIGNATED SUPPORT AREA AND THAT ADVERTISE THE AVAILABILITY OF THE TELECOMMUNICATIONS SERVICES AND THE CHARGES FOR THE TELECOMMUNICATIONS SERVICES USING MEDIA OF GENERAL DISTRIBUTION MAY RECEIVE SUPPORT FROM THE FUND FOR THE DESIGNATED SUPPORT AREA.

(3) DISTRIBUTIONS MUST BE CALCULATED FOR THE DESIGNATED SUPPORT AREAS ESTABLISHED BY THE COMMISSION. IN THE CASE OF AN AREA SERVED BY A RURAL TELEPHONE COMPANY, THE TERM "DESIGNATED SUPPORT AREA" MEANS THE RURAL TELEPHONE COMPANY'S MONTANA SERVICE AREA UNLESS THE RURAL TELEPHONE COMPANY VOLUNTARILY ADOPTS A PROXY MODEL FOR THE CALCULATION OF THE RURAL TELEPHONE COMPANY'S COST OF TELECOMMUNICATIONS SERVICES UNDER SUBSECTION (6). AFTER ADOPTION OF A PROXY MODEL, THE RURAL TELEPHONE COMPANY'S DESIGNATED SUPPORT AREA MUST BE AN AREA DESIGNATED

BY THE COMMISSION, WHICH MAY BE SMALLER THAN A WIRE CENTER. THE TERM DESIGNATED SUPPORT AREA FOR ALL OTHER TELECOMMUNICATIONS CARRIERS MEANS A GEOGRAPHIC AREA AS ESTABLISHED BY THE COMMISSION, WHICH MUST BE SMALLER THAN A WIRE CENTER.

(4) SUPPORT FOR THE SERVICES LISTED IN [SECTION 12(1)] MUST BE CALCULATED AS THE DIFFERENCE BETWEEN THE COSTS DETERMINED IN EACH DESIGNATED SUPPORT AREA AND THE AFFORDABILITY BENCHMARK IN THAT SUPPORT AREA. THE COMMISSION SHALL ADOPT RULES TO DETERMINE AFFORDABILITY BENCHMARKS.

(5) EXCEPT AS PROVIDED IN SUBSECTION (6), FOR RURAL TELEPHONE COMPANIES AND OTHER ELIGIBLE TELECOMMUNICATIONS CARRIERS OFFERING SERVICES IN A DESIGNATED SUPPORT AREA SERVED BY A RURAL TELEPHONE COMPANY, THE AVERAGE COST FOR EACH LINE MUST BE CALCULATED AND SUBMITTED, BASED ON THE PRECEDING CALENDAR YEAR, TO THE FISCAL AGENT AS FOLLOWS:

(A) IF AN ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER HAS NOT BEEN DESIGNATED PURSUANT TO [SECTION 10(3)], THE RURAL TELEPHONE COMPANY'S TOTAL UNSEPARATED LOOP COST, AS DEFINED BY FEDERAL SEPARATION RULE METHODOLOGY IN EFFECT ON DECEMBER 31, 1996, MUST BE ADDED TO THE SWITCHING COSTS, LOCAL TRANSPORT COSTS, AND CUSTOMER OPERATIONS COSTS ASSIGNED TO THE TELECOMMUNICATIONS SERVICES SET FORTH IN [SECTION 12(1)], WHICH MUST BE CALCULATED USING THE METHODOLOGY SET FORTH IN FEDERAL COMMUNICATIONS COMMISSION JURISDICTIONAL SEPARATION RULES IN EFFECT AS OF DECEMBER 31 OF EACH CALENDAR YEAR. THIS TOTAL COST MUST BE REDUCED BY ANY FEDERAL UNIVERSAL SERVICE SUPPORT, INTERSTATE ALLOCATION OF LOOP COSTS ~~CHARGED TO LONG-DISTANCE COMPANIES~~, AND LOOP COSTS RECOVERED THROUGH INTRASTATE TELECOMMUNICATIONS CARRIER COMMON LINE CHARGES TO LONG-DISTANCE COMPANIES.

(B) UPON THE DESIGNATION OF AN ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER PURSUANT TO [SECTION 10(3)] IN A DESIGNATED SUPPORT AREA SERVED BY A RURAL TELEPHONE COMPANY, THE ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER HAS ACCESS TO THE FUND ON THE SAME BASIS AS THE RURAL TELEPHONE COMPANY. UPON THE DESIGNATION OF THE ADDITIONAL ELIGIBLE TELECOMMUNICATIONS CARRIER, BOTH THE CARRIER AND THE RURAL TELEPHONE COMPANY MUST RECEIVE DISTRIBUTIONS FROM THE FUND BASED UPON THE RURAL TELEPHONE COMPANY'S AVERAGE COST FOR EACH LINE DISAGGREGATED TO GEOGRAPHIC AREAS

SMALLER THAN A WIRE CENTER. THE SUPPORT FOR EACH LINE FOR EACH GEOGRAPHIC AREA MUST BE BASED UPON THE RURAL TELEPHONE COMPANY'S COSTS, AS DETERMINED IN SUBSECTION (5)(A), DISTRIBUTED TO EACH OF THE GEOGRAPHIC AREAS ON THE BASIS OF RELATIVE DISTRIBUTION FACTORS ESTABLISHED BY A COST PROXY MODEL ADOPTED BY THE COMMISSION.

(6) EXCEPT AS PROVIDED IN SUBSECTION (5)(B), FOR COMPANIES THAT ARE NOT RURAL TELEPHONE COMPANIES AND FOR RURAL TELEPHONE COMPANIES VOLUNTARILY ELECTING TO USE A COST PROXY MODEL, THE AVERAGE COST FOR EACH LINE IN DESIGNATED SUPPORT AREAS MUST BE CALCULATED BASED ON THE COST PROXY MODEL ADOPTED BY THE COMMISSION. THIS TOTAL PER-LINE COST MUST BE REDUCED BY ANY FEDERAL UNIVERSAL SERVICE SUPPORT, INTERSTATE ALLOCATION OF LOOP COSTS ~~CHARGED TO LONG-DISTANCE COMPANIES~~, AND LOOP COSTS RECOVERED THROUGH INTRASTATE TELECOMMUNICATIONS CARRIER COMMON LINE CHARGES TO LONG-DISTANCE COMPANIES.

(7) IN DETERMINING ANY PROXY MECHANISM UNDER THIS SECTION, THE COMMISSION SHALL USE A MODEL THAT:

(A) TARGETS SUPPORT TO A GEOGRAPHIC AREA SMALLER THAN A WIRE CENTER;

(B) USES ACCEPTABLE OUTSIDE PLANT DESIGN AND COSTING PRINCIPLES;

(C) USES REASONABLE SWITCH DESIGN AND COSTING PRINCIPLES;

(D) INCLUDES A REASONABLE SHARE OF THE JOINT AND COMMON COSTS OF THE TELECOMMUNICATIONS CARRIER;

(E) MEETS STANDARDS FOR DOCUMENTING MODEL LOGIC AND THE SOURCES OF COST DATA INPUT; AND

(F) MEETS REASONABLENESS TESTS TO ENSURE THAT MODEL OUTPUTS ARE REPRESENTATIVE OF COSTS THAT CAN BE REASONABLY EXPECTED IN THE CONSTRUCTION OF A NETWORK AND THAT THE NETWORK IS CAPABLE OF PROVIDING TELECOMMUNICATIONS SERVICES THAT MEET THE TELECOMMUNICATIONS SERVICES QUALITY STANDARDS OF THE COMMISSION AND FEDERAL REGULATORS.

(8) AN ELIGIBLE TELECOMMUNICATIONS CARRIER PROVIDING TELECOMMUNICATIONS SERVICES THROUGH RESALE OF ANOTHER TELECOMMUNICATIONS CARRIER'S TELECOMMUNICATIONS SERVICES OR FACILITIES MAY NOT RECEIVE SUPPORT FOR THOSE TELECOMMUNICATIONS SERVICES OR FACILITIES IF THE RATES CHARGED TO AN ELIGIBLE

TELECOMMUNICATIONS CARRIER BY THE OTHER TELECOMMUNICATIONS CARRIER ~~INCLUDE~~ HAVE BEEN REDUCED BY A CONTRIBUTION ~~FOR~~ FROM UNIVERSAL SERVICE FUNDS UNDER THIS SECTION.

(9) COSTS OF ADMINISTERING THE FUND MUST BE PAID FROM THE FUND.

NEW SECTION. **SECTION 16. DISCOUNTS FOR SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS.** THE COMMISSION IS AUTHORIZED TO ESTABLISH INTRASTATE DISCOUNTS TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS AND TO PERFORM ADMINISTRATIVE FUNCTIONS NECESSARY AS A CONDITION OF FEDERAL UNIVERSAL SERVICE SUPPORT IF THE DISCOUNTS ARE RECOVERED THROUGH THE FEDERAL UNIVERSAL SERVICE FUND.

NEW SECTION. **SECTION 17. WHOLESALE PRICING STANDARDS.** ~~IF~~ (1) EXCEPT AS PROVIDED IN SUBSECTION (2), IF THE COMMISSION IS REQUESTED BY A TELECOMMUNICATIONS CARRIER TO ESTABLISH WHOLESALE PRICES FOR SERVICES PROVIDED BY A TELECOMMUNICATIONS CARRIER, THE COMMISSION MAY NOT ESTABLISH A WHOLESALE PRICE USING A ~~STANDARDIZED OR~~ DEFAULT PROXY DISCOUNT VALUE TO BE APPLIED TO THE APPLICABLE RETAIL PRICE. THE COMMISSION SHALL ESTABLISH WHOLESALE PRICES USING COMPANY-SPECIFIC COSTS.

(2) THIS SECTION DOES NOT APPLY TO THE PRICES, TERMS, AND CONDITIONS OF A FINAL OR INTERIM ARBITRATED INTERCONNECTION AGREEMENT, ARBITRATION DECISION, OR APPEAL FROM AN AGREEMENT OR DECISION IF THE REQUEST FOR ARBITRATION WAS FILED ON OR BEFORE MARCH 1, 1997.

NEW SECTION. **SECTION 18. PRICING OF INDIVIDUAL NETWORK ELEMENTS.** (1) ~~IF~~ EXCEPT AS PROVIDED IN SUBSECTION (4), IF THE COMMISSION IS REQUESTED BY A TELECOMMUNICATIONS CARRIER TO ESTABLISH THE PRICES OF THE INDIVIDUAL NETWORK ELEMENTS USED TO PROVIDE TELECOMMUNICATIONS SERVICES, THE COMMISSION SHALL SET THOSE PRICES AT A JUST AND REASONABLE LEVEL SUFFICIENT TO RECOVER THE ACTUAL COST OF PROVIDING THOSE ELEMENTS, INCLUDING:

(A) A REASONABLE SHARE OF THE JOINT AND COMMON COSTS SO THAT THE TELECOMMUNICATIONS CARRIER HAS A REASONABLE OPPORTUNITY TO RECOVER THESE COSTS ~~IN TOTAL~~;

(B) DEPRECIATION COSTS THAT ARE BASED UPON FORWARD-LOOKING ASSET LIVES CONSISTENT WITH ASSET LIVES OF OTHER TELECOMMUNICATIONS CARRIERS AND THAT REFLECT AN AMORTIZATION OF ANY UNDERDEPRECIATED INVESTMENT;

(C) A REASONABLE SHARE OF THE COSTS ASSOCIATED WITH FILL FACTORS ~~THAT RECOGNIZE THE~~, RECOGNIZING SPARE CAPACITY REQUIRED TO FULFILL ELIGIBLE TELECOMMUNICATIONS CARRIER RESPONSIBILITIES; AND

(D) A FAIR RETURN ON INVESTMENTS.

(2) THE ACTUAL COST OF PROVIDING THE ELEMENTS INCLUDED IN SUBSECTIONS (1)(A) THROUGH (1)(D) MUST BE DETERMINED WITHOUT REFERENCE TO A RATE-OF-RETURN OR OTHER RATE-BASED PROCEEDING.

~~(2)~~(3) IF A TELECOMMUNICATIONS CARRIER USES AVERAGE PRICES FOR SERVICES TO END USERS WITHOUT REGARD TO THE CUSTOMER'S LOCATION, THE COMMISSION SHALL SIMILARLY ESTABLISH AN AVERAGE COST AND WHOLESALE PRICE FOR EACH INDIVIDUAL NETWORK ELEMENT SOLD TO OTHER TELECOMMUNICATIONS CARRIERS. THE COMMISSION MAY DEPART FROM AVERAGE PRICING FOR NETWORK ELEMENTS ONLY TO THE EXTENT THAT THE RETAIL PRICES TO END USERS OF A TELECOMMUNICATIONS CARRIER HAVE DEPARTED FROM AVERAGE PRICING.

(4) THIS SECTIONS DOES NOT APPLY TO THE PRICES, TERMS, AND CONDITIONS OF A FINAL OR INTERIM ARBITRATED INTERCONNECTION AGREEMENT, ARBITRATION DECISION, OR APPEAL FROM AN AGREEMENT OR DECISION IF THE REQUEST FOR ARBITRATION WAS FILED ON OR BEFORE MARCH 1, 1997.

NEW SECTION. **SECTION 19. PROHIBITED SUBSIDIES.** THE COMMISSION MAY NOT SUBSIDIZE THE PRICE OF ANY TELECOMMUNICATIONS SERVICE, INCLUDING WHOLESALE PRICES OR THE PRICES OF INDIVIDUAL NETWORK ELEMENTS, BY REDUCING THE PRICES TO REFLECT AN ALLOCATION OR CREDIT OF REVENUE FROM THE OPERATIONS OF AN AFFILIATED COMPANY OF THE CARRIER OF TELECOMMUNICATIONS SERVICES, INCLUDING A PUBLISHING AFFILIATE.

NEW SECTION. **SECTION 20. INTERIM UNIVERSAL ACCESS PROGRAM -- PURPOSE.** (1) THERE IS AN INTERIM UNIVERSAL ACCESS PROGRAM.

(2) THE PURPOSE OF THE INTERIM UNIVERSAL ACCESS PROGRAM IS TO FURTHER THE GOAL

OF UNIVERSAL ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES IN MONTANA BY:

(A) INCREASING SAFETY NET COVERAGE THROUGH WHICH ADVANCED TELECOMMUNICATIONS SERVICES WOULD, AT A MINIMUM, BE AVAILABLE THROUGH A LIBRARY, SCHOOL, OR OTHER SPECIFIED TYPE OF PUBLIC INSTITUTION IN EVERY COMMUNITY IN THE STATE;

(B) ENCOURAGING INNOVATION IN COMMUNITIES TO BRING ADVANCED SERVICES TO MONTANA'S RURAL AREAS; AND

(C) ASSISTING COMMUNITIES THAT HAVE ALREADY SUCCEEDED IN OBTAINING SERVICES WHEN ONGOING TRANSPORT COSTS THREATEN THE CONTINUED AVAILABILITY OF THESE SERVICES.

NEW SECTION. **SECTION 21. INTERIM UNIVERSAL ACCESS PROGRAM -- DEFINITIONS.** AS USED IN [SECTIONS 20 THOUGH 27], THE FOLLOWING DEFINITIONS APPLY:

(1) "ADMINISTRATOR" MEANS THE PUBLIC SERVICE COMMISSION.

(2) "ADVANCED SERVICES" MEANS HIGH-SPEED (56 KBPS AND ABOVE), DEDICATED OR SWITCHED, BROADBAND TELECOMMUNICATIONS CAPABILITY THAT ENABLES USERS TO ORIGINATE AND RECEIVE HIGH-QUALITY VOICE, DATA, GRAPHICS, AND VIDEO TELECOMMUNICATIONS USING ANY TECHNOLOGY.

(3) "HEALTH CARE PROVIDER" MEANS ANY ONE OF, OR A CONSORTIUM OF, THE FOLLOWING INSTITUTIONS LOCATED IN MONTANA:

(A) POSTSECONDARY EDUCATIONAL INSTITUTIONS OFFERING HEALTH CARE INSTRUCTION;

(B) COMMUNITY HEALTH CARE CENTERS OR HEALTH CENTERS PROVIDING HEALTH CARE TO MIGRANTS;

(C) LOCAL HEALTH DEPARTMENTS OR AGENCIES;

(D) COMMUNITY MENTAL HEALTH CENTERS;

(E) NOT-FOR-PROFIT HOSPITALS; AND

(F) RURAL HEALTH CLINICS.

(4) "LIBRARY" MEANS A LIBRARY LOCATED IN MONTANA THAT IS ELIGIBLE FOR PARTICIPATION IN STATE-BASED PLANS FOR FUNDS UNDER TITLE III OF THE LIBRARY SERVICES AND CONSTRUCTION ACT (20 U.S.C. 335C, ET SEQ.).

(5) "SCHOOL" MEANS:

(A) AN ELEMENTARY SCHOOL OR SECONDARY SCHOOL THAT MEETS THE DEFINITION SET

FORTH IN SUBSECTIONS (14) AND (25), RESPECTIVELY, OF SECTION 14101 OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (20 U.S.C. 8801) AND THAT DOES NOT HAVE AN ENDOWMENT OF MORE THAN $50 MILLION; OR

(B) A BUREAU OF INDIAN AFFAIRS ELEMENTARY AND SECONDARY SCHOOL.

(6) "TRIBAL COLLEGE" MEANS A COLLEGE RECOGNIZED BY THE UNITED STATES GOVERNMENT AS A TRIBAL COLLEGE.

NEW SECTION. **SECTION 22. INTERIM UNIVERSAL ACCESS PROGRAM -- PUBLIC ACCESS POINTS.** AT A MINIMUM, ALL PUBLIC ACCESS POINTS MUST PROVIDE THE GENERAL PUBLIC ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES THAT ARE NOT SUBSCRIPTION-BASED. THE ACCESS MUST BE PROVIDED FREE OF CHARGE AND AT CONVENIENT HOURS ON A WALK-IN BASIS. PUBLIC ACCESS POINTS MAY OFFER SUBSCRIPTION- BASED SERVICES, SUCH AS ELECTRONIC MAIL, BUT ARE NOT REQUIRED TO ADMINISTER THESE TYPES OF SERVICES.

NEW SECTION. **SECTION 23. INTERIM UNIVERSAL ACCESS PROGRAM -- FUNDED SERVICES -- APPLICATION FOR SERVICES.** (1) THE UNIVERSAL ACCESS PROGRAM PROVIDES FUNDING THROUGH DISCOUNTS ONLY FOR ADVANCED SERVICES FOR USE BY PUBLIC ACCESS POINTS, SCHOOLS, TRIBAL COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS APPROVED BY THE ADMINISTRATOR.

(2) THE FIRST PRIORITY OF THE PROGRAM IS TO PROVIDE FUNDING FOR AT LEAST ONE PUBLIC ACCESS POINT IN EACH MONTANA COMMUNITY. SUBJECT TO AVAILABLE FUNDING, THE PROGRAM SHALL ALSO PROVIDE FUNDING FOR ADVANCED SERVICES TO SCHOOLS, TRIBAL COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS.

(3) THE ADMINISTRATOR SHALL ESTABLISH DISCOUNT LEVELS FOR SERVICES IN EACH OF THE FOLLOWING CATEGORIES:

(A) PUBLIC ACCESS POINTS;

(B) EDUCATION SERVICES TO SCHOOLS AND TRIBAL COLLEGES FOR DISTANCE LEARNING, ELECTRONIC ACCESS TO EDUCATIONAL RESOURCES, AND ELECTRONIC DELIVERY OR RECEPTION OF EDUCATIONAL PROGRAMMING;

(C) LIBRARY SERVICES FOR LIBRARIES NOT SERVING AS PUBLIC ACCESS POINTS FOR

ELECTRONIC ACCESS TO INFORMATION AND LIBRARY SERVICES; AND

(D) RURAL HEALTH SERVICES TO RURAL HEALTH CARE PROVIDERS FOR ACCESS TO SIMILAR SERVICES AS URBAN HEALTH CARE PROVIDERS AND TO ENSURE ELECTRONIC ACCESS TO HEALTH CARE SERVICES.

(4) TO RECEIVE DISCOUNTED SERVICES UNDER THE INTERIM UNIVERSAL ACCESS PROGRAM, PUBLIC ACCESS PROVIDERS, SCHOOLS, TRIBAL COLLEGES, LIBRARIES, AND HEALTH CARE PROVIDERS SHALL APPLY FOR THE DISCOUNTS. THE APPLICATION MUST BE ACCOMPANIED BY A RESOLUTION OF SUPPORT FROM THE GOVERNING BODY OF THE APPROPRIATE CITY, COUNTY, OR TRIBAL GOVERNMENT IN WHICH THE APPLICANT IS LOCATED.

NEW SECTION. **SECTION 24. INTERIM UNIVERSAL ACCESS PROGRAM -- SERVICES PROVIDED AT DISCOUNTS -- REIMBURSEMENTS.** (1) TELECOMMUNICATIONS CARRIERS SHALL PROVIDE ADVANCED SERVICES TO ELIGIBLE USERS AT SPECIFIED DISCOUNTS. THE AMOUNT OF THE DISCOUNT MUST BE REIMBURSED TO THE PROVIDER FROM THE INTERIM UNIVERSAL ACCESS ACCOUNT ESTABLISHED IN [SECTION 26].

(2) EXCEPT AS PROVIDED IN SUBSECTION (3), THE ADVANCED DISCOUNT IS EQUAL TO 50% OF THE BEST COST RATE AVAILABLE TO ANY BUSINESS CUSTOMER FOR AN EQUIVALENT OF ONE 56 KBPS DEDICATED CIRCUIT TO THE NEAREST ACCESS POINT FOR THE REQUESTED SERVICE. HOWEVER, THE COST TO THE ELIGIBLE USER MAY NOT EXCEED $100 A MONTH.

(3) IF FUNDS FROM THE INTERIM UNIVERSAL ACCESS ACCOUNT ARE NOT SUFFICIENT TO FULLY REIMBURSE FOR DISCOUNTS AUTHORIZED IN SUBSECTION (2), THE AMOUNT OF THE DISCOUNTS TO EACH ELIGIBLE USER MUST BE REDUCED PROPORTIONALLY.

(4) EVEN IF BEST COST RATES AVAILABLE TO ANY BUSINESS CUSTOMER INCREASE BY MORE THAN 5%, THE AMOUNT PAYABLE BY AN ELIGIBLE USER MAY NOT INCREASE BY MORE THAN 5% DURING THE PERIOD FROM [THE EFFECTIVE DATE OF THIS SECTION] TO JANUARY 1, 2000.

(5) SUBJECT TO RESTRICTIONS IN FEDERAL LAW, IF INTERSTATE UNIVERSAL ACCESS SERVICES ARE ESTABLISHED BY THE FEDERAL COMMUNICATIONS COMMISSION, FEDERAL FUNDING FOR UNIVERSAL ACCESS SERVICES MUST BE USED TO REDUCE STATE FUNDING FOR INTRASTATE SERVICES.

NEW SECTION. **SECTION 25. INTERIM UNIVERSAL ACCESS PROGRAM -- FUNDING -- SURCHARGE RATE.** (1) (A) THE INTERIM UNIVERSAL ACCESS PROGRAM IS FUNDED BY A SURCHARGE BASED ON THE RETAIL REVENUE FOR ALL INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE. THE SURCHARGE MUST BE DETERMINED BY THE ADMINISTRATOR BY RULE. THE SURCHARGE MUST BE SET AND APPLIED TO ALL TELECOMMUNICATIONS CARRIERS ON A COMPETITIVELY NEUTRAL BASIS.

(B) THE RATE OF THE SURCHARGE MUST BE SET TO RAISE $250,000 DURING THE FISCAL YEAR ENDING JUNE 30, 1998, AND $500,000 DURING THE FISCAL YEAR ENDING JUNE 30, 1999. THE RATE MAY BE CHANGED, BY RULE, AS NECESSARY.

(C) THE PAYMENT OF THE SURCHARGE IS AN EXPLICIT SUBSIDY AND MAY BE SHOWN AS A SEPARATE LINE ITEM ON EACH CARRIER'S RETAIL TELECOMMUNICATIONS SERVICES BILLS.

(D) THE SURCHARGE MAY BE APPLIED ONLY TO TELECOMMUNICATIONS SERVICES. CUSTOMER PREMISE EQUIPMENT IS NOT CONSIDERED A TELECOMMUNICATIONS SERVICE.

(2) THE SURCHARGE IS PAYABLE QUARTERLY TO THE DEPARTMENT OF REVENUE AND DEPOSITED BY THE DEPARTMENT IN THE INTERIM UNIVERSAL ACCESS ACCOUNT ESTABLISHED IN [SECTION 26]. THE DEPARTMENT MAY BY RULE:

(A) ESTABLISH THE FORM OF A REPORTING STATEMENT TO BE FILED BY TELECOMMUNICATIONS CARRIERS SUBJECT TO THE SURCHARGE;

(B) SET THE DATE AFTER THE END OF A FISCAL QUARTER THAT THE QUARTERLY PAYMENT MUST BE MADE;

(C) PROVIDE FOR RECORDKEEPING BY TELECOMMUNICATIONS PROVIDERS SUBJECT TO THE SURCHARGE; AND

(D) PROVIDE METHODS TO PAY THE SURCHARGE, INCLUDING OFFSETS OF SURCHARGES OWED AGAINST DISCOUNTED SERVICES TO BE REIMBURSED, AND TO PAY REFUNDS OF OVERPAYMENT OF THE SURCHARGE.

(3) (A) THE COLLECTION OF A SURCHARGE UNDER THIS SECTION IS SUBJECT TO:

(I) THE DEFICIENCY ASSESSMENT, REVIEW, INTEREST, AND PENALTY PROVISIONS OF 15-53-105;

(II) THE PENALTY AND INTEREST FOR DELINQUENCY AND WAIVER PROVISIONS OF 15-53-111;

(III) THE ESTIMATION OF TAX ON FAILURE TO FILE A STATEMENT PROVISIONS OF 15-53-112;

(IV) THE WARRANT FOR DISTRAINT PROVISIONS OF 15-53-113; AND

(V) THE STATUTE OF LIMITATIONS PROVISIONS OF 15-53-115.

(B) ANY REFERENCE TO THE TAX UNDER SECTIONS LISTED IN SUBSECTION (3)(A), EITHER BY CITE TO A SECTION OF LAW OR LITERALLY TO THE TAX, REFER, FOR THE PURPOSES OF THIS SECTION, TO THE SURCHARGE IMPOSED BY THIS SECTION.

NEW SECTION. **SECTION 26. INTERIM UNIVERSAL ACCESS PROGRAM -- ACCOUNT.** AN INTERIM UNIVERSAL ACCESS ACCOUNT IS ESTABLISHED IN THE STATE SPECIAL REVENUE FUND IN THE STATE TREASURY. ALL MONEY RECEIVED BY THE DEPARTMENT OF REVENUE PURSUANT TO [SECTION 25] MUST BE PAID TO THE STATE TREASURER FOR DEPOSIT IN THE ACCOUNT. AFTER PAYMENT OF REFUNDS, THE BALANCE OF THE ACCOUNT MUST BE USED FOR THE PURPOSES DESCRIBED IN [SECTION 24].

NEW SECTION. **SECTION 27. COMMISSION TO MAKE RECOMMENDATIONS ON UNIVERSAL ACCESS AND SERVICE.** THE PUBLIC SERVICE COMMISSION SHALL EXAMINE AND MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE ON UNIVERSAL ACCESS AND SERVICE. THE COMMISSION SHALL:

(1) REVIEW THE IMPACT ON UNIVERSAL ACCESS AND SERVICE IN MONTANA OF ANY FEDERAL UNIVERSAL SERVICE FUND THAT RESULTS FROM CURRENT FEDERAL COMMUNICATIONS RULEMAKING UNDER THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; AND

(2) EVALUATE THE EXTENT TO WHICH THE FEDERAL UNIVERSAL SERVICE FUND FALLS SHORT OF SUPPORTING LEGISLATIVELY DEFINED UNIVERSAL ACCESS AND SERVICE GOALS IN MONTANA.

(3) THE COMMISSION MAY DEVELOP PLANS AND PROPOSE LEGISLATION THAT WOULD ENSURE THE ATTAINMENT OF UNIVERSAL ACCESS AND SERVICE GOALS IN MONTANA.

Section 28. Section 2-4-102, MCA, is amended to read:

"**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that

the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of Montana and the Montana Administrative Register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works~~,~~;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and [section ~~8~~ 7].

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing in this chapter may be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana Administrative Register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

~~**Section 25.** Section 35-18-503, MCA, is amended to read:~~

~~"35-18-503. Annual fee to department of revenue -- exemption from other taxes. Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof of 100 persons to whom electricity or telephone service was supplied during the previous calendar year within the state and, except as provided in [section 21] and 10-4-201, shall are be exempt from all other excise and income taxes of whatsoever any kind or nature."~~

Section 29. Section 69-3-305, MCA, is amended to read:

"69-3-305. **Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809.

(5) (a) A provider of regulated telecommunications service may offer, for a limited period of time, ~~either~~ rebates, price ~~or~~ reductions, or waivers of ~~installation~~ charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing ~~of services that remain fully tariffed requires~~ for services other than basic local exchange access to end users does not require advance approval of the commission. Informational price lists must be filed with the commission on or before the date that the promotion begins. Promotional offerings for basic local exchange access to end users and packaged services that include basic local exchange access to end users require advance approval of the commission. The commission shall approve, deny, or upon a showing of good cause set for hearing an application for a promotional discount within 30 days of the filing of the application. If the commission has not acted on the application within the permitted time period, the application is considered granted. ~~A promotional offering may not combine monopoly services with competitive services unless authorized by the commission.~~

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(c) The commission may define the appropriate scope of promotions, rebates, market trials, and grants and subsidized loans, either by rule or in response to complaints. The commission may determine whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly

discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities and grant and subsidized loan programs that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(6) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. ~~This, however~~ However, this does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

~~**Section 27.** Section 69-3-801, MCA, is amended to read:~~

~~"**69-3-801. Short title.** This part may be cited as the "Montana Telecommunications Reform Act"."~~

~~**Section 28.** Section 69-3-802, MCA, is amended to read:~~

~~"**69-3-802. Purpose.** The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. This part was adopted in response to the enactment into law of the federal Telecommunications Act of 1996, Public Law 104-104, and the work performed by the governor's blue ribbon telecommunications task force established by Chapter 508, Laws of 1995. This part expresses the policies of the state of Montana that should govern the orderly transition of the telecommunications industry in the state from a regulated industry to an industry primarily controlled by the economic forces of a competitive telecommunications marketplace. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services."~~

Section 30. Section 69-3-803, MCA, is amended to read:

"**69-3-803. Definitions.** As used in this part, the following definitions apply:

~~(1) "Advanced telecommunications services" means high-speed (56 kbps) dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.~~

~~(1)(2)~~(1) "Commission" means the public service commission.

(2) "ELIGIBLE TELECOMMUNICATIONS CARRIER" MEANS A TELECOMMUNICATIONS PROVIDER DESIGNATED BY THE COMMISSION UNDER [SECTION 10].

(3) "FUND" MEANS THE UNIVERSAL SERVICE FUND ESTABLISHED IN [SECTION 12].

~~(3)~~(4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a) on February 8, 1996, provided telephone exchange service in the area; and

(b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.

~~(2)(4)~~(5) "Private telecommunications service" means a system, including the construction, maintenance, or operation ~~thereof~~ of the system, for the provision of telecommunications service or any portion of ~~such~~ the service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

~~(3)(5)~~(6)(a) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

(b) ~~Regulated telecommunications service~~ The term does not include the provision of terminal equipment used to originate or terminate ~~such~~ the regulated service, private telecommunications service, ~~resale of telecommunications service,~~ ~~RESALE OF TELECOMMUNICATIONS SERVICES,~~ one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

~~(4) "Resale of telecommunications service" means the resale of regulated telecommunications service, with or without adding value, provided any value added would not otherwise be subject to regulation.~~

~~(7) "RESALE OF TELECOMMUNICATIONS SERVICES" MEANS THE RESALE OF REGULATED TELECOMMUNICATIONS SERVICES, WITH OR WITHOUT ADDING VALUE, PROVIDED THAT ANY VALUE ADDED WOULD NOT OTHERWISE BE SUBJECT TO REGULATION.~~

~~(8)~~(7) "RETAIL REVENUE" MEANS THE GROSS MONTANA REVENUE FROM TELECOMMUNICATIONS SERVICES THAT ORIGINATE OR TERMINATE IN MONTANA AND ARE BILLED FOR A SERVICE ADDRESS IN MONTANA, EXCLUDING REVENUE FROM THE RESALE OF TELECOMMUNICATIONS SERVICES TO ANOTHER TELECOMMUNICATIONS SERVICES PROVIDER THAT USES THE TELECOMMUNICATIONS SERVICES TO PROVIDE TELECOMMUNICATIONS SERVICES TO THE ULTIMATE RETAIL CONSUMER WHO ORIGINATES OR TERMINATES THE TRANSMISSION.

~~(6)(9)~~(8) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993.

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

~~(7)(10)~~(9) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

~~(8)(11)~~(10) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications services. The term does not mean aggregators of telecommunications services as

defined in 47 U.S.C. 226."

Section 31. Section 69-3-805, MCA, is amended to read:

"69-3-805. ~~**Manner of regulation**~~ **Registration of telecommunications** ~~**service**~~ **providers.** (1) Before any person or entity provides ~~regulated~~ telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name, ~~and~~ address, and telephone number of the provider;

(b) ~~a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;~~

~~(c) initial tariffs for the regulated telecommunications service;~~

~~(d) such other information as the commission may require to accomplish the purpose of this chapter.~~ the name, address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the provider;

(c) a description of the provider's existing operations and general service and operating areas in any other jurisdictions;

(d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal addresses and telephone numbers of each;

(e) initial tariffs or price lists for regulated telecommunications services, including a narrative description of the regulated telecommunications to be offered and the geographic area and markets to be served;

(f) a general description of the facilities and equipment that will be used to provide services, including whether the service will be offered on a facilities basis, a resale basis, or a combination of both of them;

(g) a statement of whether the provider intends to draw from the federal or state universal service fund or other explicit support funds, including a statement of whether the provider intends to seek the commission's designation as an eligible telecommunications carrier;

(h) disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanction ~~or~~ within the 5 years prior to the date of filing the notice;

(i) if the provider is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the provider's agent for service of process in Montana,

and the date of creation of the business entity; and

(i) other information from regulated telecommunications carriers as the commission may require to accomplish the purposes of this chapter.

(2) ~~The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter.~~ The commission may waive any of the requirements set forth in subsection (1).

(3) The provider shall file with the commission a report of any judgment, penalty, or sanction entered in any other jurisdiction that could adversely affect the provider's ability to provide communications services in Montana."

SECTION 32. SECTION 69-3-806, MCA, IS AMENDED TO READ:

"**69-3-806. Prohibition against cross-subsidization.** ~~(1) No~~ A provider of regulated telecommunications ~~service~~ services may not use current ~~revenues~~ revenue earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services ~~which~~ that are not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or that are not tariffed under this chapter may not be attributed to services ~~which~~ that are subject to regulation for any reason.

~~(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.~~"

Section 33. Section 69-3-807, MCA, is amended to read:

"**69-3-807. Regulation of rates and charges.** (1) ~~As to telecommunications service that is provided under regulation, the~~ The commission may establish specific rates, tariffs, or fares for the provision of ~~the~~ regulated telecommunications service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under terms and conditions that best serve the declared policy of this state. For a service detariffed under this subsection, the provider shall maintain a current price list on file with the commission and shall provide notice of changes in the price list as prescribed by the commission. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in ~~lieu thereof~~ the alternative may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(d) provide ~~such~~ other rate or service regulation as will promote the purposes of this part.

(3) Except as provided in subsection (4), in determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) other factors that the commission may prescribe through rulemaking that are appropriate to fulfill the purposes of this part.

(4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local exchange access to end-users and carrier access services may not be detariffed.

(5) A provider of regulated message telecommunications service and related services shall average its service rates on its routes of similar distance within the state unless otherwise authorized by the commission. ~~Nothing contained in this~~ This subsection may not be construed to prohibit volume discounts, discounts in promotional offerings, or other discounts as long as the discounts are not offered in a discriminatory manner.

~~(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available.~~"

~~**Section 32.** Section 69-3-809, MCA, is amended to read:~~

~~"69-3-809. Alternative forms of regulation. (1) The commission may authorize a provider of regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to:~~

~~(a) price caps;~~

~~(b) price regulation; and~~

~~(c) equitable sharing of earnings or revenues~~ revenue ~~between a provider of regulated telecommunications services and its customers.~~

~~(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission's order on the petition must be issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:~~

~~(a) will not degrade the quality of or the availability of efficient telecommunications services;~~

~~(b) will produce fair, just, and reasonable rates for telecommunications services;~~

~~(c) will not unduly or unreasonably prejudice or disadvantage a customer class;~~

~~(d) will reduce regulatory delay and costs;~~

~~(e) is in the public interest; and~~

~~(f) will enhance economic development in the state;~~

~~(g) will result in the improvement of the telephone infrastructure in the state; and~~

~~(h)~~(b) ~~conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.~~

~~(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.~~

~~(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:~~

~~(a) remains subject to the same regulation that applied when the petition was filed; and~~

~~(b) may petition the commission to be regulated under a revised alternative plan.~~

~~(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an~~

~~alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.~~

~~(6) Nothing contained in this~~ This ~~section may~~ not ~~be construed as limiting or otherwise affecting the commission's authority to conduct investigations or hear complaints as provided in part 3 of this chapter."~~

~~**Section 33.** Section 69-3-811, MCA, is amended to read:~~

~~"**69-3-811. Costs for services provided Relevant cost defined -- jurisdiction over complaints.** (1) Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.~~

~~(2) With regard to competitive services, the term "relevant costs" includes the price for any components that are used by the telecommunications provider and that would be essential for alternative providers to use in providing the competitive services pursuant to commission-approved methodology.~~

~~(3)~~(2) ~~The commission has jurisdiction to consider complaints and initiate investigations to determine whether the price charged by a provider of regulated telecommunications service is above relevant costs. The commission may also consider complaints that a pricing or promotional practice violates any provision of this title."~~

Section 34. Section 69-3-1001, MCA, is amended to read:

"**69-3-1001. Creation of program -- amount of assistance.** (1) There is a telephone ~~low-income~~ low-income assistance program to provide an eligible subscriber with a discount in the monthly charge for local exchange service in the telephone network.

(2) ~~This~~ The commission shall set the discount in the charge for local exchange service ~~is the greater of:~~

~~(a) $2~~ that is at least $3.50 a month for each eligible subscriber~~; or~~

~~(b)~~ but not more than the amount ~~necessary to obtain the matching waiver available under applicable orders and regulations of the federal communications commission~~ that is the difference between the otherwise applicable current rate for local exchange service and the rate as it was on [the effective date of this section]."

NEW SECTION. **SECTION 35. TELECOMMUNICATIONS COMMITTEE.** (1) THERE IS A TELECOMMUNICATIONS COMMITTEE. THE COMMITTEE CONSISTS OF:

(A) TWO MEMBERS OF THE SENATE, ONE FROM EACH POLITICAL PARTY, APPOINTED BY THE COMMITTEE ON COMMITTEES OF THE SENATE;

(B) TWO MEMBERS OF THE HOUSE OF REPRESENTATIVES, ONE FROM EACH POLITICAL PARTY, APPOINTED BY THE SPEAKER OF THE HOUSE; AND

(C) A REPRESENTATIVE OF THE PUBLIC SERVICE COMMISSION APPOINTED BY THE PUBLIC SERVICE COMMISSION.

(2) THE COMMITTEE SHALL MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996, PUBLIC LAW 104-104. THE COMMITTEE SHALL RECOMMEND TO THE 56TH LEGISLATURE POLICIES, PRACTICES, AND STATUTORY CHANGES THAT ARE REQUIRED TO IMPLEMENT OR CONFORM TO THE FEDERAL IMPLEMENTATION.

(3) THE OFFICE OF THE CONSUMER COUNSEL SHALL PROVIDE STAFF ASSISTANCE TO THE COMMITTEE.

NEW SECTION. **SECTION 36. APPROPRIATION.** (1) SUBJECT TO FUNDS BEING AVAILABLE PURSUANT TO SUBSECTION (2), THERE IS APPROPRIATED FROM THE STATE SPECIAL REVENUE FUND UP TO $30,000 TO THE OFFICE OF THE CONSUMER COUNSEL FOR PURPOSES OF [SECTION 35]. (2) THE TELECOMMUNICATIONS COMMITTEE MAY ACCEPT GIFTS, GRANTS, AND DONATIONS FOR DEPOSIT IN THE STATE SPECIAL REVENUE FUND FOR PURPOSES OF [SECTION 35].

NEW SECTION. **Section 37. Codification instruction.** ~~(1)~~ [Sections 1 through ~~15~~ ~~19~~ 27] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 1 through ~~15~~ ~~19~~ 27].

~~(2) [Sections 16 through 22] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 16 through 22].~~

NEW SECTION. **Section 38. Repealer.** Sections 69-6-101, 69-6-102, and 69-6-103, MCA, are repealed.

NEW SECTION. **SECTION 39. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 40. Effective ~~dates~~ DATE.** ~~-- applicability -- rulemaking.~~ ~~(1) Except as provided in subsection (2)(a), [this act] is effective on passage and approval.~~

~~(2) (a) [Sections 16 through 22~~ 17 THROUGH 19~~] are effective July 1, 1997~~ [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

~~(b) [Section 21] applies to retail revenue for all intrastate telecommunications services received by telecommunications providers after June 30, 1997.~~

~~(c) For the purpose of allowing the implementation of [sections 16 through 22] to begin on July 1, 1997, without resorting to the adoption of emergency rules, the public service commission and the department of revenue may begin the process for the adoption of rules to implement [sections 16 through 22] prior to [the effective date of sections 16 through 22], but rules may not be adopted until July 1, 1997.~~

NEW SECTION. **Section 41. Termination.** [Sections ~~16 through 22~~ 11 THROUGH 15] terminate December 31, 1999.

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